In the Supreme Court of the United States

No. 79-254

OFFICE OF DISCIPLINARY COUNSEL,
Respondent

vs.

ALLEN N. BRUNWASSER,
Petitioner

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPREME COURT OF PENNSYLVANIA

ALLEN N. BRUNWASSER
Attorney for Petitioner

903 B Grant Building
Pittsburgh PA 15219

Murrelle Printing Co., Box 100, Sayre, Pa. 18840—(717) 882-0401

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES:

MISCELLANEOUS:

IN THE SUPREME COURT OF THE UNITED STATES

OFFICE OF DISCIPLINARY COUNSEL,
Respondent,

vs.

ALLEN N. BRUNWASSER,
Petitioner.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Allen N. Brunwasser respectfully presents this Petition for allowance of Certorari to the Supreme Court of Pennsylvania:

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS DELIVERED IN THE COURTS BELOW

The September 25, 1978 opinion of the Hearing Committee of the Disciplinary Board of the Supreme Court of Pennsylvania (the Commitee) is unreported. A copy is appended to this petition (29a). The Hearing Committee recommendation was unlimited probation and a public reprimand.

The December 9, 1978 opinion of the Disciplinary Board of the Supreme Court of Pennsylvania (the Board) is unreported. It reduced the penalty to a private reprimand. It is reproduced at 83a.

The request for Supreme Court action after Petitioner refused a private reprimand is unreported. It is reproduced at 92a.

The April 26, 1979, order of Pennsylvania Supreme Court Chief Justice M. J. Eagen, affirming the action of the Board, is unreported. It is reproduced at 94a.

The May 10, 1979 order of Chief Justice M. J. Eagen denying oral argument and reargument de novo before the entire complement of the Supreme Court of Pennsylvania is unreported. It is reproduced, 95a.

JURISDICTION

This is a disciplinary proceeding brought against a member of the bar of the Supreme Court of Pennsylvania. The Committee entered an order directing unlimited probation for the remainder of Petitioner's professional life plus a public reprimand.

After appeal and argument, the Board rejected this recommendation and reduced the penalty to a private reprimand.

Petitioner refused the discipline and the matter was certified to the Supreme Court of Pennsylvania for de novo proceedings. On April 26, 1979, without oral argument or briefing the Chief Justice of the Supreme Court of Pennsylvania, Michael J. Eagen, affirmed the decision of the Board and directed a private reprimand.

A timely, May 7, 1979, motion requesting oral argument and reargument before the entire complement of the Supreme Court was rejected by the Chief Justice on May 10, 1979.

Jurisdiction to petition the United States Supreme Court for certiorari to the Pennsylvania Supreme Court is founded upon 28 U.S.C. 1257 (3).

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Do the 5th and 14th Amendments to the Constitution of the United States protect an attorney from a unique, unexpected and unusual interpretation of the ABA Disciplinary Rules when the Court's decision is applied to his conduct retroactively?

2. Do Fifth and Fourteenth Amendment due process foreclose discipline of a lawyer when he does what appellate court decisions tell him he must do in his function as counsel?

3. Do Sixth and Fourteenth Amendment fair notice foreclose convicting a lawyer of charges which were never made within the meaning of *In Re Ruffalo,* 1968, 88 S.Ct. 1222, 390 U.S. 544?

4. Does the participation of former Chief Justice B. R. Jones, present Chief Justice M. J. Eagen, Disciplinary Board Chairman Alexander Unkovic and Review Member Carl E. Glock, Jr. in the pre-formal complaint events create such a 5th and 14th Amendment barred appearance of injustice which requires the conviction be reversed within the meaning of *U.S. ex rel. Accardi v. Shaughnessy,* 1954, 347 U.S. 260, 74 S.Ct. 499?

5. If the Supreme Court of Pennsylvania promises review of the disciplinary proceedings de novo, must this promise be fulfilled within the meaning of 5th and 14th Amendment due process?

6. Has the appeal been mooted by the action of the Board in already imposing discipline on June 15, 1979?

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

This petition involves the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States which declare:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (Fifth Amendment)
>
> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Fourteenth Amendment)
>
> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an im-

partial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." (Sixth Amendment)

CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

A. Beginning on October 20, 1973, Grace S. Harris, Esquire (Harris), an Assistant City of Pittsburgh (the City) Solicitor complained over and over to Disciplinary Counsel about the professional conduct of Allen N. Brunwasser, Esquire (Petitioner), insofar as it affected her experience with him in a tax case where she represented the City and he was the target of her suit.

Petitioner's problem grew out of his protest to a City business privilege tax which levied an assessment on private attorneys but not those who were government employed even though the latter were able to contribute this tax-free income to their non-government employed law firm associates or partners who then divided it free of tax.

On September 24, 1974, at No. C4-73-351, Disciplinary Counsel sent Petitioner a letter asking him to give his version of the complaints which had been narrowed to:

(1) Filing a preliminary objection to a rule to show cause.

(2) Joining equity and trespass in one summons.

(3) Threatening to sue an assistant in the office of the Court's Clerk if he did not remove a default

judgment entered in direct violation of a Harris and Petitioner stipulation.[1]

(4) Improperly referring to a case involving the domestic affairs of Eugene B. Strassburger, III, Esquire (Strassburger), Harris's superior in the City Law Department.[2]

(5) Requesting, under a statute permitting it, that counsel for the City file a warrant of attorney showing their representation was properly authorized but only filing the original of the pleading in one of the two pending cases although copies were served on opposing counsel in both cases. Stated another way, for some reason the Clerk had only docketed the warrant of attorney demand in one case although service was made in both.

Petitioner filed a written response within twenty days and the matter laid dormant.

B. At No. C4-76-487, and on January 6, 1977, Petitioner was asked to reply to a complaint filed by Shirley and Morris Kronzek, claiming he had improperly refused to endorse two insurance settlement checks totaling $750.00.

On January 19, 1977, Petitioner explained that his client of 25 years, Srul Kronzek (Srul), had brought his son and daughter-in-law in for an opinion on a case which another lawyer had lost. As was his custom, Srul paid the fee in post-dated checks.

[1] When evidence was taken before the Committee, James F. Fitzgerald, Esquire, the Clerk's Solicitor, gave undenied testimony that the Assistant Clerk's conduct was improper and contrary to orders issued both by him and the elected Clerk.

[2] This charge was dismissed.

Petitioner gave an opinion and went on to settle the case, but before the insurance checks arrived, Srul died and his estate, run by Shirley for her three busy executor brothers-in-law, refused to pay three, Srul-issued, outstanding checks in a total amount of $650.00.

Petitioner claimed he had an attorney's lien on the checks (see *Greek Catholic Union of Russian Brotherhoods of the U.S.A. v. Russin et al.*, 1940, 340 Pa. 295) and that his client was Srul and not Morris and Shirley.

Shirley was given the two insurance checks and the three estate checks and promised to have the latter pay its checks in return for Petitioner's promise to endorse the insurance checks. However, she shortly changed her mind and, after threatening criminal and disciplinary action, demanded the insurance checks be endorsed and the estate checks forgotten.[3]

At the evidentiary hearing before the Committee, it turned out that Harris and Kronzek had discussed the disciplinary case when the former consulted with her concerning a water charge made by the City Water Authority on which Harris sat.

C. Petitioner was never able to open the judgment by default because, instead of petitioning the Court prompt-

[3] By way of interest, Shirley and Morris entered an action in assumpsit against petitioner and when the matter came up for trial, the calendar control judge ordered the executors in and they admitted that Shirley was putting family pressure on them not to pay $650.00 which they wanted to pay. The case was settled with the understanding that the estate would pay the $650.00 and petitioner would endorse the insurance checks.

Although petitioner kept his part of the bargain, Shirley and Morris did not so it was necessary to present a petition to enforce the settlement. After argument the Court ordered the $650.00 paid and the Kronzeks sent a check by letter dated June 19, 1979.

ly, he thought a mistake had been made, awaited the return of Harris from her vacation and then tried persuasion without success until it was too late.

Harris issued about eight executions but could not collect. One of them, directed against Petitioner's office, was served December 14, 1976.

The next day, Harris postponed the sale (t. 1508, 1527, 1528, 1541-1544) and later the Clerk's Solicitor, James R. Fitzgerald, advised Petitioner that both he and the Sheriff's attorney had decided the levy was illegal and that no sale would occur so that Petitioner could forget about it (t. 1347, 1349). And Petitioner did forget about it.

But on January 5, 1977, while engaged in a trial, Petitioner was advised by his secretary that the City Treasurer, Joseph L. Cosetti, a Deputy Sheriff and movers were at his office to sell and transfer everything including his file cabinets, with the case files in them, to a warehouse and thus effectively put him forever out of business (t. 1378-1383).

Unable to contact either the Clerk's Solicitor or his Sheriff counterpart, Petitioner had his daughter, now a Bryn Mawr student, but then functioning as a legal intern, file a claim of goods on behalf of the landlord who had a lien, under Pennsylvania law, for rent due on the lease which expired April 30, 1977.

This stopped the sale and Administrative Judge of the Civil Court Division, John P. Flaherty, Jr. (now Justice Flaherty of the Pennsylvania Supreme Court), stayed all future sales or executions.

So Petitioner had won his case. But Harris, who now could not collect her improperly entered default judgment, asked the Board for disciplinary vengeance.

Later, another Assistant City Solicitor, who had been involved on the tax cases, D. R. Pellegrini, Esquire, filed a complaint charging Petitioner with ethical violation in filing the claim of goods which stopped the proposed Sheriff sale.

D. But unknown at the time to Petitioner, powerful wheels were secretly meshing gears behind the scenes.[4]

(1) On January 13, 1977, Harris sent a letter (3a) to then Chief Justice Benjamin R. Jones, but did not mail a copy (see DR 7-110(B) (2)[5]) to Petitioner.

(2) On October 2, 1977, Harris sent a letter (14a) to the present Chief Justice, Michael J. Eagen, without mailing a copy to Petitioner. This communication disclosed a previous February, 1977 contact but the Chief Justice has refused to release it and Petitioner is in no posture to fight about it. But, see March 30, 1977 letter from Allen B. Zerfoss, Chief Prosecutor, to the Chief's secretary (5a).

(3) On October 6, 1977, the Chief Justice, in effect, directed Chief Disciplinary Counsel Zerfoss, whom he could remove at will, to act (16a).

(4) On January 18, 1978, Petitioner asked (17a) former Chief Justice Jones, who had resigned to join a

---

[4] Most of this was discovered when Petitioner was, after a unique motion, permitted to look into his administrative file contrary to the usual practice in disciplinary proceedings.

[5] "(B) In an adversary proceeding, a lawyer shall not communicate or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except: *** (2) In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer."

prestigious Philadelphia law firm, for copies of this material but that jurist never responded.

Petitioner was able to secure what is included in this petition by service of a subpoena duces tecum on Alexander Unkovic, then Chairman of the Pennsylvania Disciplinary Board.

(5) Joseph L. Cosetti, the City Treasurer (Cosetti) and a member of the bar, complained to the Allegheny County Bar Association Ethics Committee (t. 1368-1369), the Supreme Court disciplinary people (t. 1357, 1362, 1363, 1365-1366, 1372), the Administrator of the Pennsylvania Supreme Court (t. 1373), Carl E. Glock, Esq., then Pa. Bar Association President (t. 1375), and talked the case over with Strassburger (t. 1376).

(6) On July 15, 1977, Alexander Unkovic (Unkovic), still Chairman of the Pennsylvania Supreme Court Disciplinary Board, entered his appearance for Strassburger and the firm of Berger, Kapetan & Malakoff, Esquires, $607,200.00 fee-seeking lawyers in a class action filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 72-968 (see docket entry number 204, 97a).

(a) Strassburger was a behind-the-scenes mover in the disciplinary case, a witness at the evidentiary hearing before the Committee (t. 961-1092), and Petitioner's main adversary in the tax case which was the seed of this trouble.[6]

(b) On July 19, 1977, as a class member, Petitioner filed an objection to the Strassburger and Berger

[6] Petitioner had also successfully opposed Strassburger in numerous other major litigation ordered by the City's Mayor.

counsel fees (see docket entry number 215, 97a) and, on August 19, 1979 (see docket entry number 217, 97a), Unkovic filed on behalf of his clients an answer which raised as a second defense a severe criticism of Petitioner's conduct in the above-described tax case and other City-oriented litigation.

(c) On September 1, 1977 (docket entry number 226, 97a), petitioner filed a motion to strike the appearance of Unkovic plus his law firm, Meyer, Unkovic & Scott, because:

(i) Unkovic's posture as Chairman of the Pennsylvania Disciplinary Board was inconsistent with his representation of Berger and Strassburger and a veiled threat that petitioner had better back up in his counsel fee objections.

((a)) Under Rule of Disciplinary Enforcement 17-5(C)(1), the Chairman, on his own motion, has power to open a file on Petitioner, Berger or Strassburger.

((b)) Under Disciplinary Enforcement Rule 17-5(C)(2) he appoints Disciplinary Counsel and his staff.

((c)) That a member of his firm is involved on the same side and has filed a joint answer with Strassburger in litigation where Petitioner represents the opposition (G.D. 77-16349 in Allegheny County Common Pleas Court, Civil Division).

((d)) If Berger and Strassberger disclosed unethical conduct to Unkovic in the class action fee case, he would be required to prosecute them under Disciplinary Rule 17(C)(1) but would be barred from doing so under the confidential restriction of

ABA Canon 4 and the attorney-client privilege of 17 PS 32 especially if the 22% requested fee is declared exorbitant within the meaning of DR 2-106 or an improper splitting prohibited by DR 2-107.

Petitioner cited ABA Informal Opinion 1066, decided September 19, 1968, to back his motion up.

(ii) Petitioner and Unkovic filed briefs in which the latter renewed his ethical attack on the former and in particular his City tax case conduct.

(iii) But on October 11, 1977, Unkovic voluntarily withdrew his appearance (docket entry no. 230, 97a) and from that point Berger and Strassburger have represented themselves.

(7) Unkovic, Harris and Carl E. Glock, Jr., Esquire, then cooperated to bring the four above charges to the posture of a formal written complaint before the Board.

(a) Glock had been review officer on three of the four charges but, after making and filing his recommendation on the third, withdrew from that particular case because of alleged difficulty involving petitioner and his firm, Reed, Smith, Shaw & McClay, Esquires, the largest law office in the Western District of Pennsylvania. However, he left his recommendation in the office of Disciplinary Counsel so the review member who succeeded him could see it.

(b) On July 15, 1977, it should be remembered, Berger and Strassburger had retained Unkovic, the Board Chairman, as their personal counsel (docket entry number 204, 97a) in the class action fee request at Civil Action No. 72-968 in the United States District Court for the Western District of Pennsylvania.

(c) Between then and August 3, 1977, Harris, who together with Strassburger and Pellegrini, had participated in the tax case, sent a letter to Glock, then President of the Pennsylvania Bar Association (8a).

Although Petitioner's name was not on this communication, it somehow ended up in his administrative file with other papers described below, all of which were brought in by Unkovic under subpoena duces tecum.

(d) Glock then had the letter sent (9a) to J. C. Ostrow, Esquire, who he said he thought was Board Chairman. But it turned out Unkovic had replaced him (11a). A copy was also sent to Chief Prosecutor Zerfoss.

(e) On August 15, 1977, Unkovic then sent the material on to Zerfoss whom he could remove at will (11a).

Although he had filed an answer and brief directly related to this problem in the Berger/Strassburger Federal Court fee proceeding, Unkovic said "I have no idea what her complaint is, but assume that you would wish to follow this through."

E. Zerfoss got the message and on October 17, 1977, a formal "Petition for Discipline" was filed by him with the Board. It covered everything except the Pellegrini claim of goods complaint. It was numbered 43 DB 77.

F. Petitioner objected to the procedures in D and E in a "Motion to Dismiss Proceeding because of Violation of the Doctrine of Fair Notice and Due Process of Law" filed with the Board on or about September 29, 1978.

Petitioner also requested an evidentiary hearing on possible Unkovic selection of the Committee. He mentioned, inter alia, that when a witness at the Committee

proceedings Unkovic was asked (paragraphs 10-11) if he had discussed Petitioner's disciplinary proceeding with Strassburger in order to determine the Unkovic/Strassburger impact on the issuance of the complaint, Unkovic refused to answer under attorney-client privilege (paragraph 11), that he was directed to do so but refused (paragraph 12), and that the Committee avoided the confrontation by later deciding the evidence was irrelevant (paragraph 13).

Petitioner's request for an evidentiary hearing was denied (paragraphs 26-29).

Petitioner raised the Chief Justice Jones and Eagen problem in paragraph 18 of the petition, asked for an evidentiary hearing about it (paragraph 19), and addressed the Harris, Glock, Unkovic, Zerfoss letter interchange in paragraphs 20-22 and requested an evidentiary hearing in paragraph 23.

The issue was preserved in Petitioner's brief filed with the Disciplinary Board at page 137, in his October 27, 1978 "Brief on Exceptions" filed to the decision of the Board (pp. 2-3), and in his "de novo" appeal to the Chief Justice which followed as of course when he refused to accept a private reprimand (see March 14, 1979 letter from Secretary of the Board to the Chief Justice, 92a).

G. On December 12, 1977, a Committee 4:05, composed of three out of court lawyers who Petitioner had never met before, was selected to hear the three charges covered by No. 43 DB 1977.

Petitioner filed the following motions:

(a) Motion for an open hearing. The Committee ruled anyone could come but set the hearing at the 36th

Floor local Disciplinary Counsel office in the Mellon Bank Building where a prospective attender would have to run the gauntlet of an outside hall door and a waiting room, be admitted through the general office door and then have the closed door of the hearing room opened by someone inside.

A room in Federal Court was reserved for the overflow. But, of course, only a few of those who would have preferred the anonymous and convenient entry into a Federal courtroom were willing to be identified and request ushering into the closed hearing.

(b) A motion for a pre-trial hearing. This was held January 6, 1978 and the merit evidentiary hearing scheduled for January 31, 1978.

(c) A motion (paragraphs 1-24) to dismiss the complaint because of unconstitutional bias within the meaning of the 5th and 14th Amendments to the U.S. Constitution and Article I, Sections 1, 9 and 25 of the Pennsylvania Constitution.

This pleading pointed out the litigation between Cosetti, Strassburger, Pellegrini and Harris on one side and petitioner on the other, observed that Unkovic's attorney son represented Cosetti in an election case in which petitioner appeared for his opponent, and the participation by Unkovic for Strassburger and Berger in the Federal Court class action where the former said:

> "12. Brunwasser's petition is part of his continuing campaign of intimidation against government officials, attorneys and judges who have been involved in suits seeking to require him to pay City of Pittsburgh taxes." (paragraph 5)

Unkovic's brief, filed on behalf of the fee seeking lawyers expanded on this allegation (paragraph 10) and concluded:

* * *

> "With this as a prospective, the instant petition can be seen for what it is—another attempt to harass and intimidate a member of the City Law Department into failing to enforce the tax laws against Mr. Brunwasser." (paragraph 11)

After observing the possible conflict position between Unkovic representing his clients in the fee action and being required to discipline them if they were wrong (paragraphs 6-9), Petitioner claimed Unkovic bias (paragraph 12), cited disciplinary rules giving Unkovic complete Board Rule control of the proceedings against him up to that point, including the power to investigate, appoint all staff (see also paragraph 20), the Committees and decide which ones should hear the case against Petitioner, the power to assign a review member who could overrule disciplinary counsel, the right to review that decision (paragraphs 15, 17) and choose the Board Panel members to whom the Committee decision could be appealed (paragraph 21).

After confessing lack of facts to prove his bias point (paragraph 16), and objecting to the Board Rule conclusive presumption that everything had been done correctly whether it had been or not (paragraph 19), Petitioner requested a complete investigation of Unkovic's role, made no direct charges and relied in the first instance on "the appearance of justice" (see wherefore clause) and cited United States Supreme Court cases for each point.

(d) A motion to dismiss because the charges violate the freedom of speech and right to litigate provisions of the 1st and 14th Amendments to the U.S. Constitution and Article I, Sections 7, 11 and 26 of the Pennsylvania Constitution (pages 9A-9F of the petition) and deprive petitioner, because he is an attorney, of his right to have the Kronzek matter decided by a jury (paragraph A) and sanction and chill him for resisting an improper demand by Morris and Shirley Kronzek plus punish him for objecting to and attempting to defeat an improper snap judgment, relegate him to second class citizenship just because he is a lawyer and foreclose giving himself the same spirited defense he would be obliged to give a client (paragraph B).

(e) A motion to dismiss because the ABA Disciplinary Rules are unconstitutionally vague within the meaning of the 5th and 14th Amendments to the U.S. Constitution and Article I, Sections 1, 9 and 25 of the Pennsylvania Constitution (pages 9F-9G).

(f) A motion to dismiss because the charges do not violate the rules (page 9H).

(g) A motion to investigate the background under which the charges were filed (page 9H).

Petitioner then answered on the merits and denied any conduct which would subject him to discipline.

H. On January 31, 1978, a second petition for discipline verified by Assistant Disciplinary Counsel on January 25, 1978 was filed with the Board and served on Petitioner February 9, 1978. It grew out of the Pellegrini matter.

This complaint covered the claim of goods filed by Petitioner "on behalf of" his landlord to protect the rent lien for the balance of the term and said the claim was unauthorized and the levied upon property belonged to petitioner not the landlord.

On February 13, 1978, Petitioner moved to consolidate this case with the other one, incorporated by reference his motions filed at 43 DB 77, complained about splitting this phase of the case from charges 2 and 3 in the other case (paragraphs 3-4) and protested (paragraphs 4-7) being tried and judged exclusively by Bar Association oriented hearing committees and Disciplinary Board members as an invidious discrimination violative of the 5th and 14th Amendments to the U.S. Constitution and Article I, Sections 1, 9, 25 and 26 of the Pennsylvania Constitution and then detailed how the selection method guaranteed this result and prevented a fair cross section of the legal community from sitting in judgment as hearing committees, review members or as members of the Disciplinary Board functioning as a Court of Appeals and then requested an evidentiary hearing to prove it.

He also presented other objections which he will abandon here and answered on the merits arguing that he did not say he owned the goods under levy and did not file as attorney for the landlord but only "on behalf of" as Pennsylvania Rule of Civil Procedure 3202(b)[7] and controlling cases permit.

[7] "(b) The claim shall be signed by the claimant or some one on his behalf, and shall set forth:

(1) a list of the property claimed sufficient to identify it;

(2) an estimate of the value of the property;

At the committee hearing, an executive of the landlord said he knew of the claim from the date it was filed but never raised a protest, all of which Petitioner claimed to be a ratification.

At the hearing, Petitioner mentioned that he was admitted February, 1950 and, although he had an extensive practice extending into fourteen states and all over the Commonwealth of Pennsylvania, that he had never before been disciplined or even given an informal admonishment.

Within the time provided by the rules, both Disciplinary Counsel and Petitioner filed briefs.

On September 25, 1978, the Committee lodged an opinion and said, "It recommends Public Censure By The Supreme Court, With . . . Probation", (30a-31a) and in its "Recommended Disposition" said (71a-76a):

> "The four charges against Respondent dealt with in these proceedings cover essentially three legal matters, small portions of the time and effort expended by a very busy trial lawyer over a period of six years, from 1971 to 1977. The conduct we have found to violate the Code of Professional Responsibility is clearly not of the most obvious and flagrant level, i.e., embezzlement. And yet, there is a thread running through Respondent's behavior as evidenced in this Record which is disconcerting . . . even alarming to this Hearing Committee.
>
> It seems fair to state that Respondent is not a lawyer in the conventional mold. Practicing by himself out of a small office with minimum staff and fa-

(3) a statement of the source of the claimant's ownership of the property."

cilities, he maintains a large and active practice. His unorthodox methods involve the filing of pleadings, motions, petitions, briefs and other tools of the profession in great profusion. His recital of authority is very extensive, if not always accurate and precise.

His energy and tactics in the representation of his clients, his frequent resort to personal lawsuits against others, and his liberal use of appeals have proved disconcerting and frustrating to many lawyers and judges. But it must be clear the disciplinary system is not a measure of last resort for lawyers and judges who cannot cope with an energetic and innovative practitioner. Only where a lawyer's behavior violates the Code and in so doing has inflicted harm on his client or has been abusive of the rights of other litigants, lawyers, judges, or the legal system, should the diciplinary system be resorted to. The great temptation to use the disciplinary system simply out of frustration must be avoided. Only conduct actually amounting to violations should ever merit discipline.

We therefore approached the disposition of these charges with a resolve on the one hand that the proceedings not become a weapon against Respondent by frustrated opponents, but instead, that it be exclusively a forum for measurement of his conformity with the rules of conduct to which all lawyers are bound by law and rule. Having determined violations of the Code occurred, we must now address the level of disciplinary action.

A disciplinary hearing is held to determine the continued fitness of a lawyer to practice law. In Re: Alker, 157 A.2d 749 (1960). Its purpose is not alone,

or even principally, to punish, but rather to insure the present and future protection of others who are entitled to protection. We have examined the totality of Respondent's conduct, as reflected by the evidence in the Record, since isolated instances of misconduct may not warrant severe disciplinary sanction. Office of Disciplinary Counsel vs. Campbell, 345 A.2d 616 (175).

What is the apparent future risk if Respondent continues to practice law as in the past? Exploring the thought processes and legal philosophy of Respondent based on an eighteen hundred page Record offers much assistance in measuring his capacity for good . . . or mischief.

Respondent insisted on representing himself through a long and involved proceeding despite repeated reminding by the Committee that he was entitled to legal counsel. For various reasons (cost, time required to prepare counsel, etc.) he refused. It is doubtful that the basic fallacy of a lawyer representing himself will ever be more dramatically demonstrated than in this case. The technical difficulties in separating his questions, answers, objections, arguments, etc., were substantial. But the fundamental difficulty in applying objective appraisal to emotional issues simply proved too much for him.

Respondent's view of the proceedings is unorthodox. He insisted that Disciplinary Counsel had a duty to open his files completely, to provide Respondent with evidence, witnesses and even copies of Respondent's own exhibits, and to investigate whether witnesses had told the truth. (TR 826, 937). Out of an

abundance of caution, the Hearing Committee allowed Respondent considerable latitude, by giving access to Disciplinary Counsel's file, in presenting his case, in the questions allowed, in allowing him to call witnesses out of order, and in tolerating the mixture of argument and testimony with which the Record abounds. All of this contributed to a Record which was unnecessarily long and burdensome.

Respondent revealed many novel theories relating to the practice of law. Among these were his view that a clerk in a public office has a duty to erase and/or correct entries on public records, even judgments, on the assertion of error by an attorney (TR 928-9). This Committee is convinced this is not the law and indeed is an invitation to such mischief the integrity of the recording and filing systems might well be impaired.

Respondent theorized at one point the Rules of Civil Procedure were inapplicable because the right of waiver, reserved by the Court in Pa. R.C.P. 126, means that no Rule is enforceable until the Court decides not to utilize its right of waiver. (Respondent's Brief, Page 97). Such an interpretation is clearly erroneous, but is so unorthodox as to cause one to be legitimately concerned about the standards and practices of its proposer.

Respondent during one vigorous exchange on a ruling by the Committee expressed the view that, 'when you are a lawyer, you are a warrior. You are engaged in war with the other side.' (TR 801). Unexpressed was the corrollary that 'all is fair in . . . and war.' This view is certainly consistent with Respondent's undisciplined behavior revealed in this record.

Respondent appeared as a supremely confident attorney who glories in his individuality. He views with indifference customary rules on keeping records. Indeed, his record-keeping of client payments is clearly inadequate. Yet he seems unaware, even unconcerned about this, even though this failing was at the heart of his trouble with the Kronzeks. In matters of practice, he seems unaware that while his unorthodox tactics may rarely equate themselves with brilliance, they will most often be merely bad, even dangerous practice, with his clients suffering the ultimate loss.

This Committee believes the above examples from its experience in this case warrant the judgment we have reached. Having carefully considered Respondent's conduct based on the believable testimony in this case, having carefully observed his conduct in the course of seven eventful days of hearings, and having read and thought through the revelations in his exhaustive brief, the Committee is brought to the inevitable conclusion that this defendant does not follow the law or respect it. He uses it, bends it, twists it and turns it to achieve his own chosen goals. There is danger to the private litigants, to officers of the Court, to the Court itself, indeed to the very system we describe as the Rule of Law in such disregard and disrespect.

What discipline can be exerted that others may not suffer the torment of the Kronzeks, the Grzelkas, yes and of the Harrises and Strassburgers? Can Re-

spondent adjust his habits of practice to a more rational and acceptable pattern? Can he forego the use of legal process for purposes of harassment?

This Committee has balanced many factors. These are the first formal charges against him before the Disciplinary System. Moreover, as Disciplinary Counsel pointed out in his Brief, Charges 2 and 3 arise out of lawyer-disagreements dating back a number of years. And yet, Respondent has never made the Kronzeks, the private complainants, whole by paying them money clearly due them.* And the simple truth is that Respondent has played fast and loose with the legal system, bending it to his own purpose. Respondent's attitude toward these proceedings and the legal system have been extremely negative. One does not cure an apparent contempt for the law by a sprinkling of professions of respect, as Respondent is so wont to do. Accordingly, this Committee recommends 'Public Censure By The Supreme Court, With . . . Probation' (PRDE §85.8(3)) as the appropriate discipline to be meted out to Respondent. The Committee does not believe that any level of private censure will be sufficiently impressive to Respondent. But for reasons above noted, neither suspension nor disbarment at this point seems justified.

Our recommendation of probation reflects our confidence that a period of observation and orientation for Respondent will be necessary to assist him to making necessary adjustments in his mode of practice."

---

* But see footnote 3, supra, and pages 35-37, infra.

The only trouble is that your petitioner was not charged with the conduct found to be so offensive by the Committee and the testimonial record gave these findings no support.

Stated another way, your Petitioner was convicted of charges not made and not proved.

On September 29, 1978, Petitioner filed a "Motion to Dismiss Proceeding Because of Violation of the Doctrine of Fair Notice and Due Process of Law". This pleading complained that he had been found guilty of charges never made, relied on *In Re Ruffalo*, 1968, 88 S.Ct. 1222, 390 U.S. 544 and said:

> "1. That on September 25, 1978 a Disciplinary Opinion and Recommendation was filed by Hearing Committee 4.05 comprised of Charles C. Keller, Esquire, Chairman and Chester H. Byerly and Herbert Margolis, Esquires, Committee Members.
>
> 2. That the findings and charges of the said Committee exceeded the formal charges filed in the written complaint and also went beyond the charges and considered matters beyond the charges all in violation of Due Process of Law and fair notice as defined by Article I, Sections 1, 9 and 25 of the Pennsylvania Constitution and the 5th, 6th and 14th Amendments to the Constitution of the United States. In Re Ruffalo, 1968, 88 S.Ct. 1222, 390 U.S. 544.
>
> 3. Petitioner then listed the twelve findings which appear on pages 21-26, supra, of this petition and concluded:
>
> 4. It is apparent that the Committee based its recommendation on the above matters which not only were not charged but were not supported by the tes-

timonial record when it said, 'accordingly, this Committee recommends public censure by the Supreme Court with . . . probation.'

5. As a result, the recommendation of the Committee and its findings in other respects were based on findings not supported by the record and charges which were never made all in violation of the requirements of due process and fair notice as defined by the 5th, 6th and 14th Amendments to the U.S. Constitution and Article I, Sections 1, 9 and 25 of the Pennsylvania Constitution. In the Matter of Ruffalo, supra."

On the same date he also filed a "Motion for Evidentiary Hearing Concerning the Manner in which the Hearing Committee was Chosen and How They Made the Findings Described in the Previous Motion Without any Evidence in the Record and To Determine If Any ex Parte Communication Was Made by Third Persons to Them at Anytime Previous to Their Appointment and the Above Decision".

In this motion, Petitioner again detailed the Unkovic role and complained again about the matters detailed in this petition, supra.

He also filed a "Motion to Terminate Proceedings Because of Appearance of Impropriety" which said:

"37. That the Board is respectfully urged to find that the Committee Members must practice law and are subject to termination after a period of service and will be under the jurisdictional eye of disciplinary counsel in regard to their practice both when they serve as committee members and review officers and subsequent to the time their service terminates.

38. That since Disciplinary Counsel has the absolute right to dismiss or process a charge in the first instance, the committee members, no matter how hard they try, cannot help but be pressured by the fact that Disciplinary Counsel and his Assistants may in the future have a decision to make on whether to prosecute them or not and therefore cannot help but be influenced by this subtle pressure.

39. That it is respectfully suggested that the Committee members and the review officers should be an Administrative Judge who is not subject to discipline by a lawyers committee but only by the Board of Inquiry and Review and who is not subject to any discretionary judgment by Disciplinary counsel or any Assistant Disciplinary Counsel.

40. That because of this, Respondent respectfully suggests that the hearing process lacks the appearance of justice, lack of pressure and impartiality all in violation of Due Process of Law as defined by the 5th and 14th Amendments to the U.S. Constitution and Article I, Sections 1, 9 and 25 of the Pennsylvania Constitution.

41. That, of course, having no ability to investigate, Respondent is making no charges but merely states that the appearance of justice and propriety requires that practicing lawyers, subject to prosecution at the discretion of Disciplinary Counsel and Assistant Disciplinary Counsel, should not function as Judges in a Disciplinary proceeding."

Finally, he filed a "Motion for Evidentiary Hearing Concerning any Contact Between Disciplinary Counsel, any Witness and/or Chairman Unkovic" and complained:

"53. That Respondent respectfully requests that an evidentiary hearing be held concerning what influence, if any, was placed upon Disciplinary Counsel or Assistant Disciplinary Counsel concerning the filing and prosecution of the above charges.

54. That an attempt was made to investigate into this at the Committee level but was denied.

55. That Respondent is making no charges but has examined his administrative file and many of the things said against him clearly indicate that it could only come from outside sources and he believes that if any pressure was placed on any prosecutor in this case that it would deprive him of the right to an impartial prosecutor all in violation of Article I, Sections 1, 9 and 25 of the Pennsylvania Constitution and the 5th and 14th Amendments to the Constitution of the United States."

On January 20, 1978, after observing he only obtained the facts January 16, 1978 at a pre-trial conference where he was allowed to examine his administrative file, Petitioner filed a motion to dismiss the disciplinary case in toto.

Although this pleading raised many issues, your petitioner desires to confine himself to:

(1) The ex parte communications between complainant, Grace S. Harris, Esquire, and a former and a present Pennsylvania Supreme Court Justice the latter having, without requested oral argument or briefing, summarily affirmed the recommendations of the Disciplinary Board (3a, 14a). Petitioner alleged:

"6. That, in addition, communication has been received to and from the Chief Justice of Pennsylvania, Michael J. Eagen and his secretary, Mrs. Ruth P. Strauss, and, in addition Mrs. Harris, the complainant, indicates in her letter of October 2, 1977 that she communicated directly with former Chief Justice B. R. Jones concerning this matter.

7. That after clearing with Assistant Disciplinary Counsel, Edward A. Burkardt, Respondent phoned the Office of the Chief Justice in Philadelphia and requested from Mrs. Strauss that all information concerning this matter be released. On January 18, 1978, this request was denied by Mrs. Strauss.

8. That a written communication has been sent to former Chief Justice Jones requesting the same material. Since this communication was mailed January 18, 1978, no allegation can be made concerning the result."[8]

(2) The participation of the former and present Chief Justice in the processing of a case where either of them[9] would ultimately make the final determination.

Petitioner objected, in a "Motion to Dismiss Proceedings Because of Lack of Separation of Judicial and Prosecution Functions", that:

"1. The Court and the Board are respectfully requested to observe the communications to and from the present Chief Justice and the communications from Mrs. Harris concerning what she has done.

2. That it is respectfully submitted that the judicial and prosecution functions have now merged and that due process of law as defined by Article I,

[8] Chief Justice Jones never answered.

[9] Chief Justice Michael J. Eagen did make the final determinations in this case (94a, 95a).

Sections 1, 9 and 25 of the Pennsylvania Constitution and the 5th and 14th Amendments to the Constitution of the United States prevent further prosecution of this case. *In the Matter of Schlesinger*, 1961, 404 Pa. 584, 172 A.2d 875.

3. That Respondent respectfully suggests that he would be ill-advised to investigate into any background of this case because he certainly is in no position to take an adverse stand against the highly respected Supreme Court or any member thereof or criticize or comment on any conduct of any Supreme Court Justice and in filing this motion he is making no comment or criticism but only in an orderly and respectful manner attempting to protect his position in a proceeding challenging his right to continue as a member holding the privileged position as attorney in the Honorable Supreme Court of Pennsylvania, a position he highly values.

4. That, in addition, it is respectfully submitted the mere inquiry by a member of the Supreme Court or a member of his staff would have a prejudicial to respondent effect which the appearance of justice requires be resolved by dismissing the petition. *Accardi v. Shaughnessy*, 1953, 347 U.S. 261, 266, 74 S.Ct. 499.

Respondent respectfully wants to state again that in filing this section of the motion he is not in any way criticizing any conduct of any Chief Justice of the Supreme Court or any member in the staff of said Supreme Court Chief Justice but is only, in an orderly manner, defending himself against what he respectfully believes to be unfounded disciplinary charges."

Petitioner also filed a "Motion to Provide for Separate Adjudication of this Motion" and requested that a separate hearing committee be appointed to receive evidence and adjudicate the problem. He complained:

> "5. That Respondent respectfully suggests that having the merit panel hear the material in this motion and the bias motion would be a violation of the right to a fair trial within the meaning of due process of law and Article I, Sections 1, 9 and 25 of the Pennsylvania Constitution and the 5th and 14th Amendments to the Constitution of the United States."

But on December 9, 1978, after refusing the January 20, 1978 motions, the Board rejected the recommendation of the Committee and ordered a private reprimand (83a).

On October 27, 1978, Petitioner had also filed a timely "Brief on Exceptions" with the Disciplinary Board as the rules permitted. He reasserted the arguments and positions detailed supra. This motion was filed to the findings of the Hearing Committee but the Board affirmed and, as indicated, reduced the penalty to a private reprimand.

On February 6, 1979, Petitioner filed a motion objecting to the publication of the September 25, 1978 Hearing Committee report by his adversaries in the United States District Court for the Western District of Pennsylvania at C.A. 72-968 all in violation of Disciplinary Board Rules 17-9, 17-23 and Board Rule 93.102(1) which say in relevant part:

> "Complaint submitted to the Board or counsel shall be confidential." (Disciplinary Rule 17-9)
>
> * * *
>
> "All proceedings involving allegations of misconduct by or disability of an attorney, shall be kept

confidential until and unless the Supreme Court enters its order for the imposition of *public* discipline or the respondent-attorney requests that the matter be public." (Disciplinary Rule 17-23).

* * *

"(A) General Rule. Enforcement Rule 17-23 provides that all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential until and unless: (1) The Supreme Court enters its order for the imposition of *public discipline.* (2) The Respondent requests that the matter be made public." (Board Rule 93.102(A)(1) and (2)). (Emphasis supplied.)

As can be clearly observed, Petitioner had no objection to an open hearing but did protest publication of the Committee opinion unfounded on evidence and based on charges never made.

After observing that he was protesting the counsel fee claimed by Judge Eugene B. Strassburger, III, Michael P. Malakoff and the firm of Berger, Kapetan, Malakoff & Meyer (paragraphs 2 and 3), all previously represented by Alexander Unkovic, Chairman of the Supreme Court Disciplinary Board (paragraph 4), he claimed that an ex parte request for the Hearing Committee report and all other papers had been made of the Board, that he objected to release and by October 17, 1978 communication (81a) was advised nothing would be given. Petitioner said that, although he asked the evidentiary hearing be open, this did not cover the opinion, etc.

However, ex parte and without notice, the Board held a January 19, 1979 secret meeting and directed Disciplinary Counsel in Pittsburgh to release everything or anything to anyone (paragraphs 8 and 9) (see 86a-89a).

Subsequently, Mr. Malakoff and his firm published the material in the Federal Court case and were severely reprimanded by District Judge Hubert I. Teitelbaum for doing so (paragraphs 10-11), whereupon the report was impounded.

Although not of record because the Disciplinary Hearing Committee proceedings are over, Malakoff subsequently published the opinion to a prominent Philadelphia lawyer and representives of the Gannett Newspaper chain.

Another Attorney, Robert Seewald, representing the Kronzeks, has obtained a copy of the opinion for publication.

After objecting to the ex parte and improper past and future use of the opinion, Petitioner asked the order be revoked and the opinion be impounded especially since it goes beyond the charges made and is unsupported by evidence.

The petition was denied (90a) and the Hearing Committee opinion is now available to anyone for ulterior use.

Petitioner also filed a February 12, 1979 motion to remand to the Hearing Committee because of after-discovered evidence.

He said that Shirley and Morris Kronzek had sued him for the $750.00 insurance money in the Common Pleas Court of Allegheny County, Pennsylvania at No. 7069 of 1977 and that, when the case was called for jury trial, conciliation was attempted by Calendar Control Judge Nicholas P. Papadakos where the following occurred:

(1) An unsuccessful attempt was made to extort $250.00 from your Petitioner in exchange for the $650.00 payment by the Estate of Srul Kronzek.

(2) The Judge ordered the executors to appear.

(3) Shirley Kronzek insisted, without giving a reason, that the executors (all of whom were her brothers-in-law) not pay but gave no reason for her demand.

(4) But the executors agreed to pay.

Petitioner also alleged (paragraphs 17-18) that he now has evidence Shirley Kronzek was and had affirmatively used family pressure to prevent payment of the $650.00 claimed against the estate and thus precipitated the very situation which led to her disciplinary complaint. (See fn. 3.) He said:

> "18. That your petitioner respectfully suggests that the resolution of the above dispute and the conduct of Shirley Kronzek should be considered in evaluating whether your petitioner has violated any Canon of Professional Ethics. Stated another way, Shirley Kronzek, who complained against your petitioner, has affirmatively been successful up to and including February 9, 1979 in preventing the Estate from paying the claim which is justly due and thus has precipitated the confrontation between herself and your petitioner.'

He also had obtained evidence that Shirley and Morris Kronzek did not own the bar/cafe (paragraphs 20-22) which they claim petitioner was hired to represent.

Stated another way, he wanted an evidentiary hearing to determine if the cafe/bar originally purchased for

Shirley Kronzek by Srul Kronzek was owned by Srul and the children mere straw parties.

If the latter, Srul, who paid, not Shirley and Morris Kronzek, would be petitioner's client and the Shirley and Morris complaint they were would disappear.

On March 1, 1979, the motion was denied (90a).

On March 14, 1979, the case was certified to the Supreme Court for de novo disposition (92a).

On April 26, 1979 the Chief Justice of Pennsylvania affirmed (94a). A May 7, 1979 motion for oral argument and argument before the entire Supreme Court was denied by the Chief Justice on May 10, 1979 (95a).

The Board and the Supreme Court refused to stay the private reprimand scheduled before the former on June 15, 1979. But Petitioner will argue here that the issues are still viable and not moot.

REASONS FOR ALLOWANCE OF THE WRIT

---

1. Do the 5th and 14th Amendments to the Constitution of the United States Protect an Attorney From a Unique, Unexpected and Unusual Interpretation of the ABA Disciplinary Rules When the Court's Decision Is Applied to His Conduct Retroactively?

DR 7-101 concerns "representing a client zealously". The Committee (Opinion, pp. 42a-43a) said, "Thus, the Respondent violated DR 7-101 (A) (2) and DR 7-101 (A) (3) by initially failing and later refusing to endorse the two insurance settlement checks, the proceedings of which in their entirety belonged to the Kronzeks despite having been requested by his clients to do so."

DR 7-101 (A) (2) directs, "A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services but he may withdraw as permitted under DR 2-110, DR 5-102 and DR 5-105."

DR 7-101 (A) (3) directs, "A lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102 (B)."

DR 7-102 (B) concerns disclosure of client fraud which takes place during the lawyer's representation and is irrelevant here.

Petitioner respectfully suggests any lawyer reading the above canons would never construe them to cover a fee dispute. They are directed at "representing a client zealously" which is exactly what was done here.

A case lost by another lawyer was turned around to one that generated money. Shirley did not say she hired Petitioner "for representing the Kronzeks on the Duquesne Light case" generally. She said he was only hired to give an opinion if future pursuit of the case was worthwhile.

> "Q. What was Mr. Brunwasser to do for you?
>
> A. He was to check the transcript of the hearing and give us an opinion on it.
>
> Q. What do you mean by an opinion?
>
> A. He was to read it and give us what he thought, whether it was worthwhile to pursue the thing further." (t. 29)

Petitioner turned his three unpaid fee checks plus the two unendorsed insurance checks over to her and retained nothing except the claim his checks be paid.

Petitioner relied on his lien rights apparently granted by *Greek Catholic Union of Russian Brotherhoods of America v. Russin*, 1940, 172 A.2d 402, 340 Pa. 295, after remand, 1943, 346 Pa. 236, 239 (attorney can assert lien for fees other than case represented by asset in his possession).

Thus, Petitioner did more than he was required to do. He was too zealous. If he had only given the opinion, his obligation would have been fulfilled. His successful effort to recoup the $1,000.00 fee less the costs of the transcript (t. 41) unexpectedly proved his undoing.

DR 9-102 (B) (3) directs:

> "A lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them."

Petitioner advised the Kronzeks the two insurance checks had arrived and turned them over subject to disposition of the fee dispute.

He told them his endorsement was to be withheld until $650.00, given him by the man who had hired him, was paid and turned all five checks over to them.

Thus, they knew what had been received, had possession of all of it, and were advised exactly what Petitioner wanted.

Petitioner respectfully suggests no lawyer would ever predict that this canon covers anything other than protection against stealthful theft by a lawyer of his client's funds.

DR 1-102 (A) (6) advises:

> "A lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law."

Petitioner respectfully suggests no reasonable lawyer would ever predict that an honest fee dispute would bring him within the ambit of these canons.

DR 102 (B) (4) does not exist. But this did not prevent the Committee from deciding Petitioner was in violation.

However, they may mean DR 9-102 (B) (4) which says:

> "A lawyer shall promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is *entitled* to receive." (Emphasis supplied.)

Petitioner respectfully suggests the key word is "entitled". Not only did he deliver the two insurance checks but his own three estate checks, endorsed to Shirley, as well.

He respectfully suggests no reasonable lawyer would be put on notice that his refusal to also endorse the checks under the facts in the record, especially when he eventually prevailed in his argument and received payment in full June 19, 1979 at the direction of the Calendar Control Judge before whom the case was adjusted, would result in a professional sanction under this rule.

The Committee opinion devotes twenty pages to charge 2 (pp. 43a-63a) and concludes Petitioner to be in violation of three disciplinary rules—DR 7-102 (A) (1), DR 1-102 (A) (5) and DR 1-102 (A) (6).

DR 7-102 (A) (1) warns that:

> "In his representation *of a client,* a lawyer shall not file a suit, assert a position, conduct a defense, delay a trial, or take other action, *on behalf of his client,* when he *knows or when it is obvious* that such action would serve *merely* to harass or maliciously injure another." (Emphasis supplied.)

Petitioner respectfully suggests that nowhere in these charges did he represent a client[10] and no reasonable attorney would know or believe it obvious that what the

---

[10] On page 70a of its opinion, the Committee refused to find a violation of this rule as charge 4 did not involve representation of a client and has thus interpreted the rule exactly opposite in charge 2 and charge 4.

Committee said he did was "merely" for harassment or malicious injury.

DR 1-102(A) (5) directs that, "a lawyer shall not engage in conduct that is *prejudicial* to the administration of justice" and DR 1-102(A) (6) forbids him to "engage in any other conduct that *adversely* reflects on his fitness to practice law." (Emphasis supplied.)

Petitioner respectfully suggests that no reasonable attorney reading these two canons would ever predict they would be applied to what the Committee said was done in the tax litigation which led to Petitioner's discipline.

In the assumpsit action, where Disciplinary Counsel withdrew the charges (Opinion, p. 51a) Petitioner is criticized for his failure to act by not filing a motion for sanctions in re the City's answer to his interrogatories (p. 44a), not filing an answer (p. 44a), not promptly presenting a petition to remove the default judgment (pp. 44a, 50a) and not bringing the interrogatory question to the attention of the pre-trial Judge (p. 46a).

In the equity case, Petitioner was criticized for not filing a complaint or obtaining the stay which Judge Silvestri refused to grant (p. 48a), not taking depositions which Pa. R.C.P. does not require be taken but makes optional (p. 49a), not placing the case at argument when his opponent had the same prerogative which he exercised (p. 49a), not obtaining an order for the filing of a warrant of attorney which the statute and case law do not require (*Meyer v. Littell,* 2 Pa. 170, 180, 1845; *Stitzel's Estate,* 1908, 70 A. 749, 221 Pa. 227, 230; *Fisler v. Reach,* 1902, 51 A. 599, 202 Pa. 74, 76 (warrant of attorney statute, 17 PS 1632 and 1633 self-executing and require no order of court)).

In the equity action, he was criticized for filing one suit joining equity and trespass rather than splitting them into two cases even though the pleading was only a summons and case law permits this practice. *Eldredge v. Gourley,* 3 Cir., 1974, 505 F.2d 769[11]; *Fountain Hill Underwear Mills v. Amalgamated Clothing Workers' Union of America,* 1958, 393 Pa. 385, 393, 143 A.2d 354, 359; *Wortex Mills v. Textile Workers' Union of America,* 1954, 109 A.2d 815, 819, 380 Pa. 3, 12; *Curtis v. Loether,* 1974, 94 S.Ct. 1005, 1009, Fn. 11, 415 U.S. 189, 196, Fn. 11 (request for injunction and jury trial for damages in same suit proper); *Simodejka v. Williams,* 1948, 360 Pa. 332, 333 (joinder rule enacted to avoid multiplicity of suits).

In the Court of Common Pleas of Allegheny County, Pennsylvania joinder of equity and trespass has been approved in two different cases. *Rosenberg v. Rosenberg,* M-226 of 1976 (Opinion by Judge Eugene B. Strassburger, III, who was the complaining party as a lawyer in the disciplinary case); *Juzwick v. Ryan Homes, Inc.,* decided October 27, 1976 at G.D. 76-24212, in an Opinion by Judge Rolf Larsen who is now a Justice of the Supreme Court of Pennsylvania.

The Committee says the motivation to harass or maliciously injure must be the "sole" motivation of Petitioner who respectfully suggests the charge must be dismissed if all they say is true.

Petitioner was finally successful (t. 1509, 1602) in obtaining an order from Administrative Judge John P. Flaherty, Jr. (now Justice of the Supreme Court Flaherty) enjoining the collection of this improperly entered judg-

---

[11] Disciplinary Chairman Unkovic joined the equitable and legal cases in this claim.

ment by default and the City took no appeal. So, on the merits, he has prevailed but still must suffer the unjustified stigma of discipline.

The Committee stamps Grzelka's conduct as perfect (t. 16-17, 20) but does not even mention the undenied and unimpeached testimony of the Clerk's Solicitor, Jim Fitzgerald, that it was both improper and contrary to orders (t. 1299-1355) and ignored the restrictions placed on Grzelka's future conduct concerning Petitioner and any litigation he had in the office where Grzelka functioned (t. 79-84, 907-909).

> "Q. Mr. Fitzgerald, if Mr. Grzelka had called you before the default judgment was entered, would you have allowed it to be entered without the approval of the Court after argument with both parties present?
>
> A. No. If I had been called before the judgment was entered, I would have had both of you before the Court." (T. 1332-1333)
>
> * * *
>
> "Q. When I made the request to take the judgment off, what was his duty?
>
> A. He also should have called me.
>
> Q. He shouldn't have made the decision himself, should he?
>
> A. Not on that, no." (Mr. Fitzgerald responding to interrogation at t. 1314-1315)
>
> * * *
>
> "Q. Upon examination of the stipulation and the answers to 9, 15 and 16, what was Mr. Grzelka to do before taking any action on the request for judgment?

> * * *
>
> The Witness: He should have called me." (Mr. Fitzgerald testifying at t. 1314-1315)

The Committee's conclusion that equity has no power to open a judgment by default is contrary to Pennsylvania case law. *Sherwood Brothers Company v. Kennedy,* 1938, 132 Pa. Superior Ct. 154.

The Committee says preliminary objections to a rule to show cause are improper (Opinion, p. 59a) but the Pennsylvania courts of appeal disagree. *Howell v. Franke,* 1958, 393 Pa. 440, 143 A.2d 10, 11; *Advanced Management Research, Inc. v. Emanuel,* 1970, 439 Pa. 385, 266 A.2d 673, 675; *Carey v. Carey,* 1936, 121 Pa. Superior Ct. 251, 253, and the lower Courts are of the same opinion. *Tonuci v. Lennon,* 1958, 13 D. & C. 2d 791, 798 (preliminary objection to rule to show cause why attachment should not issue treated as answer when no record objection); *Consolidated Real Estate Company v. Northumberland County,* 1950, 72 D. & C. 23, 25-26 (preliminary objection to rule to show cause why property should not be redeemed treated as jurisdictional objection when no record objection even though protest made orally at argument); *Hollinger v. Penn Harris Real Estate, Inc.,* 1966, 39 D. & C. 2d 201, 205 (preliminary objection to rule treated as jurisdictional challenge); *Wargo v. Wargo,* 1961, 57 Schuykill 32, 35 (preliminary objection to rule to show cause why party should not be substituted considered even though improper); *Weatherguard Company v. Hallanbaugh,* 1961, 8 Lebanon 188, 189 (preliminary objection, even though erroneously filed to rule to show cause why judgment should not be opened considered under Pa. R.C.P. 126 as an answer; right to answer granted after preliminary objection dismissed).

In sum, the Committee members, using hindsight, disagreed with Petitioner's procedures. *Com. v. Charleston,* 1977, 251 Pa. Superior Ct. 311, 380 A.2d 795, 797. Petitioner respectfully suggests nothing in the above rules warned him of this risk and, if this decision is approved, the practice of law will indeed become a jeopardy profession.

Charge 4 concerned the claim of goods. The personal property sale scheduled for Petitioner's office had been postponed by Harris (t. 1508, 1527, 1528, 1541-1544) on December 15, 1976 and declared illegal by the Clerk's Solicitor and his Sheriff counterpart (t. 1347, 1349, 1343-1344, 1346). James R. Fitzgerald, the Clerk's Solicitor said:

> "Q. Did you tell me that you and Mr. Wolken came to the decision that the levy was illegal and should not have been issued in the first place?
>
> A. What I did here is, I also contacted Belletti and Mrs. Harris, and she was to proceed by petition and order to permit you to have an opportunity—whatever you filed—to show that the writ was illegal."

The instructions were never changed.

> "Mr. Byerly: But you haven't changed your instructions to the Sheriff's Deputy?
>
> The Witness: No, sir, I haven't."
>
> (Committee Member interrogating Mr. Fitzgerald at t. 1349.)

The commentators plus the limited case law in this area support what Petitioner has done.

Pa. R.C.P. 3202(b) controls this situation and says: "The claim shall be signed by the claimant *or someone on his behalf.*" (Emphasis supplied.)

Anderson on Civil Practice, page 192 in the Pocket Parts says, "A property claim in Sheriff's interpleader must be signed by the claimant *or someone on his behalf.*"

Ballentine on page 129, has defined, "behalf" as "in the name of; *on account of; for the benefit,* advantage, interest, profit or vindication of".

Neither *Black* nor *Ballentine* define "on behalf of" but *Black* defines "behalf" on page 197 as "benefit, support, defense or advantage".

Webster's Third New International Dictionary at page 198 defines "behalf" as "in the interest of, as the representative of".

Texas v. Eggerman, 81 Texas 569, 572, discussed District Courts having constitutional jurisdiction "of all suits in behalf of the state" and said:

> "The word 'behalf' means 'in the name of; on account of; benefit; advantage; interest; profit; defense; vindication.' "

Petitioner would respectfully suggest that the words "on behalf of" clearly indicate filing a claim in the name of Oliver Realty Inc., as he has done.

If the Supreme Court wanted Pa. R.C.P. 3202(b) to be restricted only to an authorized representative of the claimant, it would have said so. However, it did not. It said, "some one on his behalf" and it is respectfully suggested that no attorney should be criticized or disciplined for reading those words and applying them exactly as they appear.

It would have been a simple matter for the Supreme Court to say that the claim could only be filed, "by an authorized representative" or identical language. Respon-

dent respectfully hopes the United States Supreme Court will not interpret these words in a unique and unexpected way (see p. of this brief).

Standard Pennsylvania Practice, Section 151, page 400, says:

> "The statute makes no provision as to any formalities in the notice of a claim which should be given, (cases cited) and in the absence of a rule of Court on the subject of notice to the Sheriff of the claim of the third person is sufficient. A written notice of claim by a third person has been held sufficient (cases cited). *A notice of adverse claim may be sufficient even if it is signed on behalf of the claimant by a third person.*" (Cases cited.) (Emphasis supplied.)

Footnote 3, page 100 says:

> "It is not necessary to the validity of a property claim signed by a third person that the third person be acting under a power of attorney."

In *Welsch v. Grossman,* 1935, Montgomery County, 25 D. & C. 394, 395, a son, who was defendant in execution, filed a claim on behalf of his mother who was in New York. He wrote her name without a power of attorney but the Court held this sufficient and mentioned, 25 D. & C. at 396, that interpleader was only for the protection of the Sheriff citing *Lamberton National Bank v. Kineston,* 1934, 114 Pa. Superior Ct. 365, in which the dismissal of a sheriff's interpleader was reversed after a mother said some of the execution goods belonged to her.

The Court, in discussing the purpose of interpleader, said (114 Pa. Superior Ct. at 367):

> "The purpose of the preliminary inquiry in interpleader cases . . . is to protect the sheriff not to settle contending titles; that question arises after the issue is framed. . . ."

* * *

> ". . . The Court on a preliminary inquiry does not go into the merits, other than to see that the claim is 'not merely colorable, frivolous or collusive, but may be the basis of bona fide suits. . . .' "

In conclusion, Petitioner respectfully suggests that "or someone on his behalf" clearly means exactly that, that the claimant is not required to sign. Rule 3202(b) does not say someone "authorized on his behalf" but merely sets up a way to bring to the attention of the Sheriff that some reason exists to hold up the sale pending inquiry. The impact of a rule protecting the landlord on his lease would have been brought to the attention of the Committee if they had allowed Petitioner to tell them about his own personal experience as a former collection lawyer.

Petitioner respectfully suggests no reasonable lawyer would predict or believe that the relied upon disciplinary rules would ever be interpreted in this fashion.

Petitioner relied on Harris's stay of the execution plus the promise of two fellow lawyers representing the Clerk and the Sheriff that the levy was illegal and would not proceed.

When unexpectedly faced with an emergency, he alerted the Sheriff to the landlord's claim as the law allowed and respectfully suggests he was not warned by DR 1-102(A)(4) or (5), relied upon by disciplinary counsel, that what he did would be improper. This rule says:

> "A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation" or "en-

gage in conduct that is prejudicial to the administration of justice."

Petitioner respectfully suggests nothing was dishonest or a misrepresentation or deceitful. Everything was done openly, Petitioner prevailed in the filing of his claim and justice, under the circumstances detailed in this record, was served rather than prejudiced. Petitioner respectfully suggests it would have been a miscarriage of justice for the sale to go ahead and he be put out of business under the factual circumstances of this case.

Petitioner respectfully suggests that the Committee's interpretation of the involved canons, as affirmed by the Board and Chief Justice Eagen, clearly disclose a unique, retroactive and unusual interpretation which he could not possibly foresee, all in violation of the 5th and 14th Amendments to the U.S. Constitution. *Douglas v. Buder*, 1973, 93 S.Ct. 2199, 412 U.S. 430 (unforeseeable state construction of criminal statute applied retroactively to punish defendant for past conduct violates fair warning due process of 5th Amendment); *Com. v. Pope*, 1974, 455 Pa. 384, 389, fn. 9, 317 A.2d 887, 889; *Bouie v. City of Columbia*, 1964, 378 U.S. 347, 352, 84 S.Ct. 1697, 1702 approved; *Mullaney v. Wilbur*, 1975, 95 S.Ct. 1881, 1885, fn. 10, 421 U.S. 684, 690, fn. 10.

Petitioner also respectfully suggests that the outcome of this case was a judicial ex post facto law prohibited by *Ex Parte Garland*, 1866, 4 Wall 333, 377, 71 U.S. 333, 377 (attorney disbarment judicial act which court must perform only for cause; proper conduct cannot be made improper retroactively); *Cummings v. Missouri*, 1866, 71 U.S. 277, 325, 4 Wall 277, 325 (*Garland* rule includes state action).

2. Does Fifth and Fourteenth Amendment Due Process Foreclose Discipline of a Lawyer When He Does What Appellate Court Decisions Tell Him He Must Do in His Function as Counsel?

A. Petitioner had case authority for everything he did in the Kronzek and City tax case. He really believed in good faith that his procedures were proper. No case he could find or has found, other than his own, advised him he would be disciplined for doing what the cases said he could do. He cited these cases in his State Court briefs. In regard to the charges involving the alleged harassment of charge two, even the Supreme Court of the United States had advised him that "mere" or "merely" have been defined as "sole" as "the sole basis", *U.S. v. Seeger*, 1965, 380 U.S. 163, 186, 85 S.Ct. 850, 868.

B. In regard to his obligation to present issues* vigorously, he had been advised that even if erroneous it was proper and his duty to present the issues.

(1) He had been told that he owes his client a "spirited defense", *Com. v. Bellamy*, 1977, 380 A.2d 429, 431, 251 Pa. Superior Ct. 165, and that he had a right to ask outdated law be repealed. *Greenfield v. Kolea*, 1977, 475 Pa. 351, 380 A.2d 758, 760; *Com. v. Slimick*, 1977, 33 Pa. Commonwealth Ct. 63, 380 A.2d 950, 951; *Com. v. Brady*, 1969, 255 A.2d 537, 538, 435 Pa. 229, 232.

(2) He had been told that improper motivation is irrelevant just so the cause of action is good. *Johnson v. Land Title Bank & Trust Company*, 1938, 198 A. 23, 329

---

* Of course, Petitioner does not believe that he went anywhere near the line of activity permitted by the decisions on which he relied.

Pa. 241, 242; *Stofflett v. Kress*, 1941, 47 A. 519, 342 Pa. 332, 335.

(3) He was told that a person representing himself has the same leeway as an attorney representing that person. *In the Matter of Little*, 1972, 92 S.Ct. 659, 404 U.S. 553.

(4) He had been told that lack of merit is not evidence of friviolity, *Com. v. Liska*, 1977, 252 Pa. Superior Ct. 103, 380 A.2d 1303, 1305, fn. 9, even though an appeal court decides the case has no merit and affirms it per curiam without opinion. *Maness v. Meyers*, 1975, 95 S.Ct. 584, 591, fn. 7, 419 U.S. 449, 459, fn. 7 (lawyer has right to press claim "even if it appears farfetched and untenable and he will be protected").

In fact, the Supreme Court advises, 95 S.Ct. at 595, fn. 16, 419 U.S. at 466, fn. 16, that ABA Standards require courage and zeal on the part of counsel. And further observes that a good faith error will not permit a sanction against the lawyer who has made it, 95 S.Ct. at 596, 419 U.S. at 467.

In the area of criminal law, this Court and the Supreme Court of Pennsylvania has directed that counsel must proceed on appeal even though the appeal is frivolous. *Anders v. California*, 1967, 386 U.S. 738, 87 S.Ct. 1396; *Com. v. Baker*, 1968, 429 Pa. 209, 239 A.2d 201; *Com. v. Walker*, 1978, Pa. Superior Ct. , 393 A.2d 817.

It is respectfully suggested that these directions have not been overruled by the disciplinary canons and that no reasonable lawyer could conclude that they have been.

C. A lawyer's disciplinary case is quasi-criminal, *In Re Ruffalo*, 1968, 88 S.Ct. 1222, 1226, 390 U.S. 544.

D. Petitioner respectfully suggests and urges the Supreme Court of the United States to declare that advising him that what he was doing was correct and then punishing him for believing it is a due process violation within the meaning of the 5th and 14th Amendments to the Constitution of the United States. *Raley v. Ohio*, 360 U.S. 423, 437-438, 79 S.Ct. 1257, 1265-1266 (commission advises witness he has privilege not to answer; can't convict him for taking the advice); *Cox v. Louisiana*, 379 U.S. 559, 85 S.Ct. 476 (individual told by police he can demonstrate "near" courthouse; improper to punish them for taking this advice); *U.S. v. Caceres*, decided April 2, 1979, U.S. , 99 S.Ct. 1465, 1472, fn. 15 and cases collected.

E. Petitioner respectfully suggests this is an unusual disciplinary case. His enemies have been sufficiently powerful to have him disciplined for winning a case against them.

He respectfully suggests this is a precedent that should be stopped in its tracks before the idea of retrying your victorious opponent in the Disciplinary Board catches vogue. *Powell v. McCormick*, 1969, 89 S.Ct. 1944, 1969, fn. 6, 395 U.S. 486, 531, fn. 60.

---

3. Does Sixth and Fourteenth Amendment Fair Notice Foreclose Convicting a Lawyer of Charges Which were Never Made Within the Meaning of In Re Ruffalo, 1968, 88 S.Ct. 1222, 390 U.S. 544?

A. At page 25 (60a) of its opinion, the Committee expresses concern about the impact of charge 2 conduct upon Petitioner's clients and worries:

". . . but the thought that these consequences might be visited on an innocent and unknowing client is a sobering thought this committee must at least contemplate."

In its "Recommended Disposition" (Opinion pp. 38-42, 71a-76a) it expands this concern to find him guilty of conduct never charged nor approved and tells him "Respondent's attitude toward these proceedings and the legal system have been extremely negative" (Opinion, page 42, 76a).

B. Both the United States Supreme Court in *Ruffalo, supra,* and the Pennsylvania Supreme Court *In the Matter of Rosenbaum,* decided April 28, 1978, 478 Pa. 93, 385 A.2d 1329, have condemned this type of procedure.

But neither case, brought to the attention of the Committee, the Board and Chief Justice Eagen, did Petitioner any good.

C. Although the reprimand was private, the Committee opinion is available to the general public and unlimited publication has been allowed by an ex parte Board decision in which Petitioner was not allowed to participate. (See letters of October 11, 1978, October 13, 1978 and January 22, 1978, 77a, 79a, 86a).

In his motion for oral argument and argument en banc, Petitioner raised the issue of the improper release of the Disciplinary Board opinion (paragraphs 10-14) but the Chief Justice refused to do anything about it in his May 10, 1979 order (95a).

Petitioner's request the January 22, 1979 order be reversed or a hearing held in which he could make his position known was denied.

Since the public is not aware of *Ruffalo* and *Rosenbaum* or what happened in this case, Petitioner respectfully suggests these authorities have a far greater impact than they would have on the ordinary case.

The page 25 (60a) and 38-42 (71a-76a) findings can be distributed everywhere and forever to Petitioner's continued prejudice and he can do nothing about it.

Petitioner respectfully suggests that this should not be allowed and that certiorari should be granted for briefing and oral argument on this important issue.

The Committee were complete strangers to Petitioner. He had never heard of them before. How did they obtain the information which appears in pages 38 and 42 of the opinion (71a, 76a). Petitioner respectfully suggests that *Willner v. Committee on Character and Fitness,* 1963, 83 S.Ct. 1175, 1181, 373 U.S. 96, 105, applies (lawyer's admission to bar prevented by ex parte evidence presented to Hearing Committee; procedures condemned).

Petitioner also respectfully alerts the Supreme Court of the United States that when *Ruffalo* petitioned for certiorari in his State Disciplinary problem, he did not raise the issue of fair notice and, therefore, that the case found in 85 S.Ct. 328, 379 U.S. 931, would not foreclose certiorari directed to the State Supreme Court in this case.

4. Does the Participation of Former Chief Justice B. R. Jones, Present Chief Justice M. J. Eagen, Disciplinary Board Chairman Alexander Unkovic and Review Member Carl E. Glock, Jr. in the Pre-Formal Complaint Events Create Such a 5th and 14th Amendment Barred Appearance of Injustice Which Requires the Conviction Be Reversed Within the Meaning of U.S. Ex Rel. Accardi v. Shaughnessy, 1954, 347 U.S. 260, 74 S.Ct. 499?

A. Harris's charge against Petitioner was made in October, 1973. Nothing happened until she ex parte communicated with then Chief Justice Jones and later present Chief Justice Eagen.

B. Her communication to Carl Glock, Jr., Esquire, then President of the Pennsylvania Bar Association, who had also functioned as Review Member in three of Petitioner's disciplinary cases, helped to get the ball rolling when Unkovic was also Chairman of the Supreme Court Disciplinary Board and, as indicated by the Federal Court docket entries, also counsel for Berger and Strassburger, Petitioner's powerful opponents.

C. The limited material Petitioner has been able to accumulate is partial evidence of what happened behind the scenes.

D. Petitioner is well-aware of the danger awaiting his comment on this material. So he will make none but respectfully requests that the mere existence of it is sufficient to void the decision against him. *U.S. ex rel. Accardi v. Shaughnessy*, 1954, 347 U.S. 260, 266, 74 S.Ct. 499, 503 (decision of independent immigration board reversed when opinion of Attorney General, who can appoint and remove them at will, is brought to their attention before

adjudication entered; same result necessary even though Board would rule against defendant without attorney general opinion).

E. Petitioner raised this issue before the Committee (t. 592-594, 596, 597, 662, 742-743) as soon as he became aware of it, in his exceptions filed with the Board and preserved it by refusing to accept the reprimand which caused the case to be certified to Chief Justice Eagen and also in his motion for oral argument and argument en banc (paragraphs 6, 8 and 9).

His request for an evidentiary hearing and investigation made in his September 29, 1978 board motion was summarily denied.

F. Rule of Disciplinary Enforcement 17-5 (c) (2) gives Unkovic the right with other members of the Board to appoint Chief and Assistant Disciplinary Counsel, their staff and all hearing committees and to generally run the show.

As a matter of practical procedure, Unkovic does it himself by Supreme Court Rule 17 and Board Rule 93.23 (a) (9) delegation plus the authority given under Board Rule 87.33 (c) right to appoint hearing committees and disciplinary counsel review member and Board Rule 93.29 (a) and (b) right to assign the cases and appoint Hearing Committee Chairman.

G. In his February 13, 1978 "Motion to Dismiss and for Other Relief", Petitioner objected to the invidious discrimination of being tried by bar association chiefs as required by Supreme Court Rule 17-5 (c) (9) which says:

> "The Board shall, to the extent it being feasible, consult with officers of local bar associations in the

counties affected concerning any appointment to which it is herein authorized to make."

Petitioner relied upon *Gibson v. Berryhill*, 1973, 411 U.S. 564, 93 S.Ct. 1689 and *Turner v. Fouche*, 90 S.Ct. 532, 396 U.S. 346.

Petitioner respectfully suggests that the entire disciplinary procedure in Pennsylvania is establishment controlled and the creature of Bar Association oriented lawyers. He is not a Bar Association lawyer and respectfully objects to being tried by his competitors and those who do not share his posture at the bar. *Friedman v. Rogers*, decided February 21, 1979, 99 S.Ct. 887, 898 (right of fair hearing in disciplinary charges discussed; appeal court can examine personal interests of regulatory board but principle not applied because case not disciplinary oriented).

H. Petitioner respectfully suggests that he has a right to an evidentiary hearing in order to investigate the impact of at least Unkovic and Glock in this situation. He takes the position that powerful opponents are out to destroy him just as did the successful petitioner in *Willner v. Committee on Character and Fitness*, 1963, 83 S.Ct. 1175, 1179, 373 U.S. 96, 101, and he respectfully suggests that the only method to resolve this is to have Mr. Unkovic and Mr. Glock plus Miss Harris and others involved sworn and asked exactly what participation took place when Petitioner was not available to observe it.

Petitioner in *Ruffalo*, as shown by page 14 of that brief filed at 85 S.Ct. 328, 379 U.S. 931, also took the position that the unusual procedure of convicting him on a charge never made was caused by powerful railroads attempting to remove him from practice.

5. If the Supreme Court of Pennsylvania Promises Review of the Disciplinary Proceedings de Novo, Must This Promise Be Fulfilled Within the Meaning of 5th and 14th Amendment Due Process?

A. A state is not required to give an appeal but "when an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." *Lindsey v. Normet*, 1972, 92 S.Ct. 862, 876, 405 U.S. 56, 77.

B. Article V, Section 9 of the Pennsylvania Constitution gives the right of appeal from an administrative or non-court agency to a court and gives it as a matter of right.

> "There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law."

C. The Supreme Court of Pennsylvania, in every reported case, has clearly indicated that a lawyer disciplined by a hearing committee and/or the Disciplinary Board has an absolute right of appeal de novo. Section 57 of *Vale Digest*, Attorney-Client, collects cases on discipline in the Supreme Court of Pennsylvania and each one says the review is de novo.

Petitioner also respectfully suggests that since disbarment or discipline is a judicial act, that a court decision is required. *Garland*, supra, Supreme Court Rule of Disciplinary Enforcement .

D. The distinction between a de novo hearing and one in which the appeal court merely examines the record to determine if it is correct is clear. *Ruffalo*, supra, 88 S. Ct. at 1225, 390 U.S. at 549.

The Pennsylvania Courts of Appeal have determined that "de novo" means an entirely new proceeding. Contrast *Appeal of Sullivan County Joint School Board*, 1963, 410 Pa. 222, 189 A.2d 249, with *Batrus's Appeal*, 1942, 148 Pa. Superior Ct. 587, 595, 26 A.2d 121, 124, where 26 P.S. 1126(j) gives an employee teacher a de novo hearing but not the employer school board.

Appeal of Sullivan County, supra, observed that the non-de novo hearing for the Board only gives a determination on appeal if discretion was abused whereas the employee de novo appeal under 24 P.S. 11-1132(b) gives the employee an entirely new hearing. See also: *Civitello, Jr. v. Commonwealth, Department of Transportation*, 1974, 11 Pa. Commonwealth Ct. 551, 556, 315 A.2d 666, 667.

The Supreme Court is bound to accept the interpretation by the State Supreme Court of its own law. *Hortonville Joint School District v. Hortonville Education Association*, 1976, 96 S.Ct. 2308, 2312, 426 U.S. 482, 488.

Petitioner respectfully suggests that when the Supreme Court says he gets a hearing de novo that this is not provided by the summary affirmance of the Board by an opinionless order of the Chief Justice, apparently acting alone.

---

6. Has the Appeal Been Mooted by the Action of the Board in Already Imposing Discipline on June 15, 1979?

Petitioner requested both the Board and the Supreme Court of Pennsylvania to withhold discipline pending petition for certiorari to this Honorable Court. However, these motions were denied and discipline was imposed by giving a private reprimand in Harrisburg before the Board on June 15, 1979.

Petitioner respectfully suggests that the receipt of discipline does not moot his appeal.

A. The stigma of discipline after thirty years of blemishless practice is a mark against the reputation of your Petitioner especially since the opinion can be widely disseminated by order of the Board affirmed by the Supreme Court.

B. Although it is not a matter of record, petitioner has been an affirmative target of Disciplinary Counsel in his district. These lawyers have been affirmatively soliciting people to file complaints against him. For example:

(1) On June 9, 1976, Korey discharged your Petitioner as its lawyer and retained Alexander Unkovic in a case called *Korey v. Korey* subsequent to which a disciplinary complaint was filed at No. C4-76-430 on January 27, 1977 requesting that the fees paid to Petitioner by Korey be disgorged.

Mr. Unkovic was Chairman of the Disciplinary Board at the time but the charges were dismissed on December 30, 1977.

(2) On February 14, 1978, John E. Quinn, Esquire, Assistant Disciplinary Counsel, actually solicited Irving Bails, Director of the Neighborhood Legal Service, to file a complaint against your Petitioner. However, this attorney refused to do so.

(3) At C4-76-507, nine charges were made concerning improper procedure. The complaint was dismissed on December 30, 1977.

Upon inquiry being made concerning how these charges were solicited, Disciplinary Counsel on October 13, 1977 said he could not figure out how the charges ever got started. Obviously, they were produced sua sponte by Disciplinary Counsel under Board Rule 87 (b).

(4) At No. C4-77-420, a letter of December 7, 1977 advised petitioner on his request, that sua sponte an investigation was open concerning a case called *Black v. Cosetti.* However, the charges were dismissed on December 2, 1977 as unfounded.

(5) On December 23, 1977, Disciplinary Counsel, as requested by Petitioner, advised that at C4-77-379 a sua sponte file had been opened on Petitioner involving charges having nothing to do before the Supreme Court at the present time.

C. Petitioner thus respectfully suggests that with the Disciplinary Board affirmatively looking to put him in trouble that what has occurred in this case will reoccur and might evade review and, therefore, he respectfully suggests that the receipt of punishment has not mooted his appeal both because of the professional and personal stigma which has widely been disseminated in the media, the release of the hearing committee opinion and the risk that it will happen again so that the procedural problems should be adjudicated. *Linmark Associates, Inc. v. Township of Willingboro,* 1977, 97 S.Ct. 1614, 1615, fn. 1, U.S. ; *Gilligan v. Morgan,* 1973, 93 S.Ct. 2440, 2443, 413 U.S. 1, 5; *Nebraska Press Association v. Stuart,* 1976, 96 S.Ct. 2791, 2797, 427 U.S. 539, 548.

Petitioner respectfully suggests that, in the event the Supreme Court of the United States believes merit exists in this petition, certiorari should be granted and the issues determined. Otherwise the Disciplinary Counsel and the powerful establishment enemies of your Petitioner will only be encouraged to continue on with sua sponte investigation of matters that have absolutely nothing to do with the disciplinary rules but do expend the time of your Petitioner and divert him from his other professional obligations.

CONCLUSION

Petitioner respectfully requests the Supreme Court of the United States to grant Certiorari.

Respectfully submitted,

ALLEN N. BRUNWASSER,
Attorney for Petitioner

Letter, Dated January 27, 1977

APPENDIX

SUPREME COURT OF PENNSYLVANIA

464 City Hall
Philadelphia, Pa. 19107

Benjamin R. Jones
Chief Justice

January 27, 1977

Disciplinary Board
100 Pine Street
P. O. Box 806
Harrisburg, Pa. 17108

Gentlemen:

Chief Justice Jones has asked me to refer to you for reports the enclosed copy of letter dated January 13, 1977, from Attorney Grace S. Harris concerning a complaint against Allen N. Brunwasser, Esquire, and copy of letter dated January 14, 1977, from concerning a complaint against , Esquire.

Sincerely,
(s) (Mrs.) Ruth P. Strauss
Ruth P. Strauss
Secretary to Mr. Chief Justice
Benjamin R. Jones

Enclosures

Letter, Dated January 27, 1977

Received
Jan 28 1977

The Disciplinary Board
of the
Supreme Court of Pennsylvania

Letter, Dated January 13, 1977

GRACE S. HARRIS
Attorney at Law
6567 Bartlett Street
Pittsburgh, Penna. 15217

Area Code 412
421-9624
255-2014

January 13, 1977

The Honorable Benjamin R. Jones
Chief Justice, Supreme Court of Pennsylvania
464 City Hall
Philadelphia, Pennsylvania 19104

In Re: District IV Office,
Disciplinary Board, File #C4-73-351

Dear Justice Jones,

In October of 1973, shortly after he filed frivolous personal actions against me and a clerk of the prothonotary's office for performing our legal duties as public servants, I filed a complaint with the District IV office of the Disciplinary Board against Allen N. Brunwasser, Esq.

Although Mr. Brunwasser's violations of the Code of Legal Ethics have grown more flagrant and more numerous in the three and one-quarter years that have elapsed and although many persons have offered additional documentary evidence to the Board to support my complaint, the Board has not yet acted. It was not until I threatened to take legal action to compel movement on my file that the office required Mr. Brunwasser to answer my charges, and that was a year ago October.

Letter, Dated January 13, 1977

Mr. Burkhardt and his staff have been exemplary in investigating and acting on other matters. I cannot understand how they can delay acting in this case, when so many people have sent evidence of Mr. Brunwasser's continuing serious violations. I have complained to Mr. Burkhardt on many occasions about the Board's failure to act; I feel as if I am turning into a nag. Can you discover the source of the Board's reluctance to act in this particular matter?

Thank you for your cooperation.

Very truly yours,
(s) Grace S. Harris
Grace S. Harris

gsh/m

Respondent's Exhibit Q.
D. N. West
2/2/78

Letter, Dated March 30, 1977

THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

100 Pine Street
P. O. Box 806

Harrisburg, Pennsylvania 17108
(717) 232-7525

March 30, 1977

Chief Disciplinary Counsel
Allen B. Zerfoss

Assistant Disciplinary Counsel
John R. Arney, Jr.
Edward A. Burkhardt
Deborah A. Cackowski
Roger E. Craska
John W. Herron
Gary Lawlor
Charles F. Lieberman
Samuel D. Miller, III
Jeffrey P. Paul

Received
Apr 01 1977

The Disciplinary Board
of the
Supreme Court of Pennsylvania

Letter, Dated March 30, 1977

Mrs. Ruth P. Strauss
Secretary to Mr. Chief Justice
Michael J. Eagen

Supreme Court of Pennsylvania
464 City Hall
Philadelphia, Pennsylvania 19107

Re: Complaint Against Allen N. Brunwasser, Esquire (C4-73-351)

Dear Mrs. Strauss:

In response to your follow-up call yesterday to Mrs. Nan M. Cohen, Secretary of the Disciplinary Board, and your previous letter dated January 27, 1977 to the Board I provide the following information concerning the complaint of Grace S. Harris, Esquire, against Allen N. Brunwasser, Esquire.

The matter of Ms. Harris' complaint was the subject of review referred to a "Reviewing Member" of a hearing committee in the latter part of last year and approved by such member for prosecution of formal charges. For a number of reasons the Petition for Discipline has not been filed to date among which are the resignation in December 1976 of the Assistant Disciplinary Counsel (Roger Craska, Esquire;—position still not filled) to whom the case was assigned; the heart attack of the Assistant Disciplinary Counsel-in-Charge of District IV, Edward A. Burkhardt, Esquire, early in January (expected return mid-April); and the fact that other charges against Mr. Brunwasser were the subject of investigation and possible inclusion for hearing with the Harris charge.

The complaint of Ms. Harris it should be noted is a rather complex one which will become apparent to any one

Letter, Dated March 30, 1977

reviewing the voluminous file in this matter. We anticipate a bitter hearing with a determined defense presented. We can not predict the outcome but since the matter may eventually be presented to the Supreme Court for adjudication, I decline at this time to provide the form DB-3 analyzing the case and containing the "Reviewing Member's" determination and the basic file unless the Court directs me to do so.

I suggest you inform Ms. Harris that her complaint has been approved for prosecution of formal charges and that a Petition for Discipline will probably be filed concerning her charge in April 1977 according to present plans. A hearing should follow shortly thereafter.

I trust this will serve adequately as the report you requested.

With kind personal regards.

Very truly yours,
(s) A. B. Zerfoss
A. B. Zerfoss
Chief Disciplinary Counsel

ABZ/jb
cc: Edward A. Burkhardt, Esquire, Assistant Disciplinary Counsel

Nan M. Cohen, Secretary, The Disciplinary Board

J. Leonard Ostrow, Esquire, Chairman, The Disciplinary Board

Letter, From G. H. Harris, Esq.

Do you have a question about a PBA service? A suggestion? A problem? A complaint?

Carl Glock wants to hear about it. Use this folder to write to him.

Dear Mr. Glock:

I do not believe that the local Disciplinary Board is carrying out its duties when it sits on disciplinary actions for almost four years without holding hearings and without following up evidence and case law that is presented to it at regular intervals.

The disciplinary board apparently acts only when fraud against clients is shown and turns the other cheek when lawyers regularly violate canons of legal ethics. I think some sort of investigation is in order.

Name: Grace S. Harris
Address: 6567 Bartlett Street
City: Pittsburgh

Phone: 412-421-9624; 255-2014
Zip: 15217

Letter, Dated August 3, 1977

PENNSYLVANIA BAR ASSOCIATION

100 South Street
Harrisburg, Pennsylvania
Post Office Box 186 17108
Area Code 717-238-6715

Frederick H. Bolton, Executive Director
Olivia Pickard Kistler, Administrative Assistant

August 3, 1977

Grace S. Harris, Esquire
6567 Bartlett Street
Pittsburgh, Pennsylvania 15217

Dear Grace:

Mr. Glock has asked me to acknowledge and thank you for your response to our pamphlet, "The President of the Pennsylvania Bar Association Is Anxious to Hear From You."

Due to the nature of your response, I am forwarding a copy to the Chairman and Chief Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania and to the Chairman of our Committee on Legal Ethics and Professional Responsibility for their consideration.

Thank you for taking the time to write to us. We appreciate your continued interest and support.

Letter, Dated August 3, 1977

With very best regards,

Sincerely yours,
Olivia Pickard Kistler

OPK: see
cc w/enc: J. Leonard Ostrow, Esquire
Allen B. Zerfoss, Esquire
Victor L. Drexel, Esquire

Letter, Dated August 15, 1977

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA
100 Pine Street
P.O. Box 806
Harrisburg, Pennsylvania 17108
(717) 232-7525

Office of the Secretary
Nan M. Cohen

Members of the Board
Alexander Unkovic,
Chairman
Charles V. Henry, III,
Vice-Chairman
Thomas J. Foley, Jr.
Henry T. Reath
Dennis C. Harrington
John C. Anderson
Herbert J. Johnson, Jr.
Raymond Pearlstine
Pasco L. Schiavo

August 15, 1977

Allen B. Zerfoss, Esquire
The Disciplinary Board of the
Supreme Court of Pennsylvania
100 Pine Street
P.O. Box 806
Harrisburg, Pa. 17108

Dear Allen:

I am sending you a note from Leonard Ostrow, together with copies of the correspondence pertaining to a memorandum from Attorney Grace S. Harris, of Pitts-

Letter, Dated August 15, 1977

burgh, to Carl Glock, President of the Pennsylvania Bar Association.

Miss Harris is an Assistant City Solicitor for the City of Pittsburgh. She was a recent candidate for the Common Pleas Court and is active in the Pennsylvania Bar Association. I have no idea what her complaint is, but assume that you would wish to follow this through.

Will you also have someone call the Pennsylvania Bar Association so that they are aware that I have replaced Leonard as Chairman. You will note the admonition of our former Chairman.

If you believe that I should respond directly to this letter, I have no hesitation in doing so.

Sincerely yours,
Alexander Unkovic

AU/bv
Encls.
cc: J. Leonard Ostrow, Esquire

EX U

MEMO
From the Desk of
ATTY. J. LEONARD OSTROW

Alec—

Some people are very reluctant to let me retire gracefully as Chairman of the Disciplinary Board.

Best regards,

Len

Keep up the good work. And don't "sit on disciplinary action for 4 years." What are we paying you for?

Letter, Dated August 15, 1977

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA
100 Pine Street
P.O. Box 806
Harrisburg, Pennsylvania 17108
(717) 232-7525

Office of the Secretary
Nan M. Cohen

Members of the Board
Alexander Unkovic,
Chairman
Charles V. Henry, III,
Vice-Chairman
Thomas J. Foley, Jr.
Henry T. Reath
Dennis C. Harrington
John C. Anderson
Herbert J. Johnson, Jr.
Raymond Pearlstine
Pasco L. Schiavo

August 15, 1977
J. Leonard Ostrow, Esquire
G. Daniel Baldwin Building
Erie, Pa. 16501
Dear Leonard:

Thanks for calling the Harris matter to my attention. It is evident that it will take some time for me to be recognized as the Chairman, following in the footsteps of a very illustrious predecessor.

Sincerely,
Alexander Unkovic

AU/bv
Encl.

Letter, Dated October 2, 1977

GRACE S. HARRIS
Attorney at Law
6567 Bartlett Street
Pittsburgh, Penna. 15217

Area Code 412
421-9624
255-2014

Sunday, October 2, 1977

The Honorable Michael J. Eagen
Chief Justice, Supreme Court of Pennsylvania
Courthouse
Scranton, Pennsylvania 18503

Dear Mr. Chief Justice,

Because your intention that the legal profession police itself was stressed in your interview with the Pittsburgh Press that appeared today, I am writing again to remind you that it is now four years since I first filed a complaint with the Disciplinary Board against Allen N. Brunwasser, Esq., for suing a Prothonotary's clerk merely because that clerk refused to expunge a Judgment without an Order of Court.

Delay of four years in any proceeding is prejudicial to the Complainant and inexcusable but it is particularly reprehensible in an action against an attorney whose modus operandi consists mainly of efforts to delay, delay, delay. Mr. Brunwasser has continued to violate the Code throughout this period during which I have written the Board repeatedly, spoken to Mr. Burkhardt often, and submitted reams of evidence. I even wrote the former Chief Justice Jones before I appealed to you last February.

Letter, Dated October 2, 1977

I have seen the Board move rapidly on occasion, even where the charges involved were speculative, to say the least. The Board, however, like many attorneys and judges, seems to be intimidated by Mr. Brunwasser's practise of suing anyone who does not agree with him. His strategy includes the allegation of falsehoods and half-truths (as he argued in regard to me before your Honorable Court last Friday) and the "right" to pursue the truth through discovery (which he does not initiate properly). Meanwhile, he releases his Complaints to the newspapers which are free to report his allegations, i.e. the scandalous attack on the character of Judge Wekselman.

Although he has sued me on non-existant grounds five times, I am not concerned for myself. My good reputation with the Allegheny County Bar is secure and I do not have to protect a private practice. I am, however, very concerned about the reputation of the legal profession and its ability to exist with dignity and respect in Pittsburgh. What should I tell my daughter in law school when she asks why the Bar does not police itself?

Very truly yours,
(s) Grace S. Harris
Respondent's Exhibit P
D.M.—West 2/2/78

Letter, Dated October 6, 1977

SUPREME COURT OF PENNSYLVANIA

Michael J. Eagen
Chief Justice

October 6, 1977

Allen B. Zerfoss, Esq.
Chief Disciplinary Counsel
The Disciplinary Board
Supreme Court of Pennsylvania
100 Pine Street, Box 806
Harrisburg, Pennsylvania 17108

Dear Mr. Zerfoss:

Mrs. Harris seems to have good reason to complain.

Sincerely,
(s) M. J. Eagen

MJE:lcf
Enclosure: Harris letter

Received
Oct 10 1977

The Disciplinary Board
of the
Supreme Court of Pennsylvania

Letter, Dated January 18, 1978

January 18, 1978

B. R. Jones, Esquire
Suite 2600, 123 South Broad Street
Philadelphia, PA 19107

Dear Chief Justice Jones:

I am sorry to bother you or even attempt to divert you from what I know must be very responsible activity.

However, I am facing disciplinary complaint with a hearing set for January 30, 1978.

The hearing committee gave me broad discovery on my argument that bias might be involved in the filing of the charges.

I received various letters including one from Chief Justice Eagen and a letter to him from Chief Disciplinary Counsel Zerfoss.

Without going into this material, a letter dated October 2, 1977 from Grace Harris to Chief Justice Eagen indicates that she had communicated to you because she did not believe the charges filed against me in 1973 were progressing in a manner satisfactory to her.

She indicates that the communication was February, 1977.

I would respectfully request a copy of each and everything which Mrs. Harris sent to you plus any reply from your office. I would also respectfully request that any other communication with your office or anyone associated with your office concerning any disciplinary complaint

against me or complaint of any nature against me from Mrs. Harris or anybody associated with her be sent on to my office.

I realize that any comment I make will do more harm to me than good because I am a mere member of the bar without any influence of any type whatsoever and I certainly do not intend or desire to get into this position.

However, due process of law as defined by Article 1, Sections 1, 9 and 25 of the Pennsylvania Constitution plus the 5th and 14th Amendments require that I receive a copy of anything sent to a Judge, especially when he is the distinguished Chief Justice of the State in which I am admitted to practice.

Additionally, DR 7-110(b) requires I receive a copy of each and every communication to a Judge.

Ordinarily I would not care. However, this material was evaluated in determining that a formal complaint should be made against me and I will require it in presenting a case of possible disciplinary rule violation, etc.

I want to again emphasize that I am leveling no criticism against the Court. I am only attempting to defend myself against what I believe to be unfounded charges and to do so within the area of permissible defense.

I cannot send on a copy of any of the letters because I have been instructed by the hearing committee that the discovery is not to be exposed to anyone including my own secretary. In making a photograph of the letter she would, of course, be able to observe it and I do not want to risk any violation of the instructions given me by the hearing committee.

Trusting your Honor will comply with this request and again apologizing for any inconvenience, I remain,

Respectfully yours,
ALLEN N. BRUNWASSER

ANB/dc
cc: Edward A. Burkardt, Esquire,
Assistant Disciplinary Counsel

Letter, Dated January 23, 1978

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

100 Pine Street
P.O. Box 806
Harrisburg, Pennsylvania 17108
(717) 232-7525

Office of the Secretary
Nan M. Cohen

Members of the Board
Alexander Unkovic,
Chairman
Charles V. Henry, III,
Vice-Chairman
Thomas J. Foley, Jr.
Henry T. Reath
Dennis C. Harrington
John C. Anderson
Herbert J. Johnson, Jr.
Raymond Pearlstine
Pasco L. Schiavo

January 23, 1978

Allen N. Brunwasser, Esq.
903B Grant Building
Pittsburgh, Pa. 15219

RE: Office of Disciplinary Counsel
v. Allen N. Brunwasser, Esq.
No. 43 DB 77

Dear Mr. Brunwasser:

This will respond to your telephone request of January 18, 1978 for copies of correspondence referred to in

Letter, Dated January 23, 1978

the file which you reviewed in the District IV Office of the Disciplinary Board, pursuant to what you characterized as a "Discovery Order" granted by Hearing Committee 4.05.

It is my understanding you are requesting this office to furnish copies of correspondence of ex-Chief Justice Benjamin R. Jones; Chief Justice Michael J. Eagen; Mrs. Ruth Strauss, Secretary to the Chief Justice; and Allen B. Zerfoss, Esq., Chief Disciplinary Counsel, regarding Grace Harris' communications with the Court. You indicated in the phone conversation that Mrs. Strauss reported back to you that the Chief Justice would not make those letters available to you.

On reviewing the matter with Charles V. Henry, III, the Vice-Chairman of the Disciplinary Board, he requested that I advise you that since we are subordinate to the Supreme Court, and the Chief Justice has apparently determined not to make the correspondence available, we cannot overrule the decision of the Court not to make available to you its correspondence to the Board.

Following your call to me I contacted Chief Disciplinary Counsel to inquire as to whether any correspondence from the file of the District IV Office had been made available to you incident to the prehearing conference held on January 16, 1978. Mr. Zerfoss, Chief Disciplinary Counsel, inquired of his assistants in District IV and learned that two of his (Mr. Zerfoss') letters—one to Mrs. Strauss dated March 30, 1977 and the other to Chief Justice Eagen dated October 10, 1977 were made available to you at the direction of the Hearing Committee by John E. Quinn, Esq., Assistant Disciplinary Counsel. Mr. Zerfoss advises that there is no other correspondence from

Letter, Dated January 23, 1978

him to representatives of the Supreme Court in regard to this matter.

Very truly yours,
(s) Nan M. Cohen
Nan M. Cohen
Secretary

NMC/np
cc: Charles V. Henry, III, Esq., Vice-Chairman, The Disciplinary Board

A. B. Zerfoss, Esq., Chief Disciplinary Counsel

Edward A. Burkardt, Esq., Assistant Disciplinary Counsel

Members of Hearing Committee 4.05
Charles C. Keller, Esq., Chairman
Herbert Margolis, Esq.
Chester H. Byerly, Esq.

Letter, Dated January 30, 1978

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

100 Pine Street
P.O. Box 806
Harrisburg, Pennsylvania 17108
(717) 232-7525

Office of the Secretary
Nan M. Cohen

Members of the Board
Alexander Unkovic,
Chairman
Charles V. Henry, III,
Vice-Chairman
Thomas J. Foley, Jr.
Henry T. Reath
Dennis C. Harrington
John C. Anderson
Herbert J. Johnson, Jr.
Raymond Pearlstine
Pasco L. Schiavo

January 30, 1978

Alexander Unkovic, Esq.
Chairman

The Disciplinary Board of the
Supreme Court of Pennsylvania

3606 Mellon Bank Building
525 William Penn Place
Pittsburgh, Pa. 15219

Letter, Dated January 30, 1978

RE: Office of Disciplinary Counsel
v. Allen N. Brunwasser
No. 43 DB 77

Dear Mr. Unkovic:

Regarding your request for Brunwasser documents, I received the enclosures today from Mrs. Ruth P. Strauss, Secretary to Mr. Chief Justice Michael J. Eagen. We had not previously received copies of these items. Copies are enclosed for Mr. Brunwasser and the other persons designated below. It is my understanding that you will give these to the people involved at the disciplinary hearing before Hearing Committee 4.05.

Very truly yours,
(s) Nan M. Cohen
Nan M. Cohen
Secretary

/nmc
Enclosures
cc: Allen N. Brunwasser, Esq., Respondent (with enclosures)
Mrs. Ruth P. Strauss (without enclosures)
Allen B. Zerfoss, Esq., Chief Disciplinary Counsel (with enclosures)
John E. Quinn, Esq., Assistant Disciplinary Counsel (with enclosures)
Members of Hearing Committee 4.05
Charles C. Keller, Esq., Chairman (with enclosures)
Herbert Margolis, Esq. (with enclosures)
Chester H. Byerly, Esq. (with enclosures)

EX V

Letter, Dated January 27, 1978

SUPREME COURT OF PENNSYLVANIA

464 City Hall
Philadelphia, Pa. 19107

Received
Jan 30 1978

The Disciplinary Board
of the
Supreme Court of Pennsylvania

Michael J. Eagen
Chief Justice

January 27, 1978

Mrs. Nan Cohen
Disciplinary Board
100 Pine Street
P.O. Box 806
Harrisburg, Pa. 17108

Dear Mrs. Cohen:

In accordance with our conversation today and pursuant to instructions from Chief Justice Eagen, I am enclosing copies of correspondence from this office to Grace S. Harris, Esquire. The Chief Justice authorizes your office to show this material to Mr. Brunwasser. The following letters are enclosed:

1. Letter dated January 27, 1977, from me as secretary to Chief Justice Jones;

2. Letter dated April 22, 1977, from Chief Justice Eagen;

Letter, Dated January 27, 1978

3. Letter dated October 24, 1977, from me as secretary to Chief Justice Eagen.

Sincerely,

(s) (Mrs.) Ruth P. Strauss
RUTH P. STRAUSS
Secretary to
Mr. Chief Justice Michael J. Eagen

Enclosures

---

464 City Hall
Philadelphia, Pa. 19107

January 27, 1977

Grace S. Harris, Esquire
6567 Bartlett Street
Pittsburgh, Pa. 15217

Dear Ms. Harris:

Chief Justice Jones has asked me to respond to your letter of January 13, 1977, and to advise you that he is requesting the Disciplinary Board to submit a report to him concerning your complaint.

Yours very truly,
RUTH P. STRAUSS
Secretary to
Mr. Chief Justice Benjamin R. Jones

Letter, Dated January 27, 1978

464 City Hall
Philadelphia, Pa. 19107

April 22, 1977

Grace S. Harris, Esquire
6567 Bartlett Street
Pittsburgh, Pa. 15217

Dear Ms. Harris:

Your letter of January 13, addressed to The Honorable Benjamin R. Jones concerning the complaint filed against Allen N. Brunwasser, Esquire, with the Disciplinary Board of the Supreme Court was called to my attention yesterday.

It appears that Chief Justice Jones wrote to the Board concerning your complaint and was informed that the matter was under investigation and that formal charges and a Petition for Discipline "will probably be filed . . . in April 1977."

When further word is received from the Board I will write you again.

Sincerely,

Letter, Dated January 27, 1978

464 City Hall
Philadelphia, Pa. 19107

October 24, 1977

Grace S. Harris, Esquire
6567 Bartlett Street
Pittsburgh, Pa. 15217

Dear Ms. Harris:

Chief Justice Eagen has requested that I send to you the enclosed copies of letters dated March 30 and October 10, 1977, from the Disciplinary Board concerning your complaint against Allen N. Brunwasser, Esquire.

Sincerely,
RUTH P. STRAUSS
Secretary to
Mr. Chief Justice Michael J. Eagen

Enclosures

Report of Hearing Committee

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

100 Pine Street, P.O. Box 806,
Harrisburg, Pennsylvania 17108

Form DB-10 1/74

TRANSMITTAL OF REPORT OF HEARING COMMITTEE

Docket Number 43 DB 77—3 DB 78

OFFICE OF DISCIPLINARY COUNSEL
Petitioner

vs.

ALLEN N. BRUNWASSER
Respondent

To: Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania
100 Pine Street, P.O. Box 806
Harrisburg, Pa. 17108

On behalf of Hearing Committee 4.05, the undersigned Chairman transmits herewith the following:

* X Report of Hearing Committee in the above proceeding.

X The complete original Transcript of Testimony and the original of all Exhibits.

X Other Petitions For Discipline and Respondent's Motions.

(s) Charles C. Keller
Chairman, Hearing Committee 4.05

Date September 20, 1978

Filed Sep 25 1978

The Disciplinary Board of the
Supreme Court of Pennsylvania

(s) Nan M. Cohen
Secretary

* Effective July 1, 1975, The Disciplinary Board is requesting that hearing committee reports be prepared on 8½" x 11" size paper.

SUMMARY

Two petitions, including four charges, were filed by Disciplinary Counsel against Respondent, an Allegheny County attorney.

The first charge arose out of the representation of private clients and the failure to turn over the proceeds of an insurance settlement.

The remaining three charges arose out of Respondent's conduct in opposing a tax judgment entered against him personally by the City of Pittsburgh. This conduct was allegedly malicious and harassing in nature and included the filing of an equity suit against opposing counsel and a prothonotary's clerk, and a subsequent course of conduct and tactics alleged to be harassing in the extreme.

The final charge involved unauthorized assertion of a landlord's lien to forestall an execution against Respondent.

The charges include various kinds of misconduct under DR 1-102, violations of duties to clients under DR 7-101 and 102 and the appearance of impropriety under DR 9-102

The Hearing Committee finds violations of all three disciplinary categories in the first, second and fourth charges. It recommends Public Censure By The Supreme Court, With . . . Probation.

STATEMENT OF THE CASE

On October 17, 1977, Petitioner filed a Petition for Discipline containing three charges of professional misconduct concerning Allen N. Brunwasser, Esquire, (hereinafter, "Respondent") and the Petition was docketed at No. 43 DB 77. The Petition for Discipline was duly served upon the Respondent on October 19, 1977.

On November 8, 1977, the Respondent filed with the Office of the Secretary of The Disciplinary Board a Motion for Additional Thirty Days to File Response to Disciplinary Complaint. The Secretary wrote to the Respondent on that same day and informed him that the Vice-Chairman of The Disciplinary Board, Charles V. Henry III, Esquire, had granted the Respondent an additional

thirty days to answer the Petition for Discipline. The Secretary also informed the Respondent in that letter that the Vice-Chairman had ruled upon the Respondent's request because Alexander Unkovic, Esquire, Chairman of The Disciplinary Board, had disqualified himself from any participation in the disciplinary proceeding concerning the Respondent. Since no answer had been received from the Respondent on or before December 12, 1977, the matter was referred to Hearing Committee 4.05 on that date.

On December 19, 1977, the Respondent did file a document entitled Motion to Dismiss Complaint Because of Unconsitutional Bias Within the Meaning of the 5th and 14th Amendments of the U.S. Constitution and Article 1, Sections 1, 9, 25 and 26 of the Pennsylvania Constitution. This document contained eight separate motions and an answer on the merits as to the charges set forth in the Petition for Discipline. In her letter of December 20, 1977, to the Members of the Hearing Committee, the Secretary directed that the Hearing Committee "should initially consider and rule on all the motions made in the course of their normal consideration of this matter."

Subsequently, a prehearing conference was scheduled for January 10, 1978, and a hearing on the merits of the Petition for Discipline scheduled for January 12, 1978. However, by letter of December 27, 1977, the Respondent requested that the Secretary continue the case because of a trial conflict. Accordingly, the prehearing conference was scheduled for and held on January 16, 1978.

At the prehearing conference, the Hearing Committee ruled on the various motions raised by the Respondent in the pleading which he had filed. The Respondent's Motion for an Open Hearing was duly granted. The Respondent's Motion To Dismiss Complaint Because Of Unconstitutional Bias was denied, with leave granted to the Respondent to present whatever evidence might be relevant in his case in chief at the hearing and renew his motion, if appropriate. He did not renew his motion. The Respondent's Motion To Dismiss Because Charges Violate The Freedom Of Speech And Right To Litigate Provisions of the 1st and 14th Amendments To The U.S. Constitution And Article 1, Sections 7, 11, And 26 Of The Pennsylvania Constitution was denied. Respondent's Motion To Dismiss Charges Because Relevant Disciplinary Rules Are Unconstitutionally Vague Under The Fact Situation Of The Complaint was denied, as was the Respondent's Motion To Dismiss Because Charges Do Not Violate Disciplinary Rules, but with the right to renew after presentation of evidence. Respondent did not renew these motions. The other motions contained in his document which the Respondent had earlier filed were not pursued by the Respondent.

At the same prehearing conference, the Hearing Committee granted the Respondent's request, over objection of Petitioner, to review the complaint files and administrative file pertaining to the disciplinary proceedings then under adjudication. The Respondent was also permitted, again over objection of Petitioner, to receive copies of any and all documents contained in the file which the Respondent desired to review, except those protected by the Rules. His Motion for Limited Sequestering of Witnesses (witnesses not to hear testimony of other witnesses or discuss testimony with other witnesses) was granted. It was also decided at the prehearing conference that hearing on the merits of the Petition for Discipline would be scheduled for January 31, February 1, and February 2, 1978.

On January 24, 1978, the Respondent filed a Motion to Dismiss Complaint, which contained five new and separate motions. By letter of January 24, the Secretary, after consultation with the Vice-Chairman of The Disciplinary Board, referred the filing to the Hearing Committee for consideration. These five motions were considered by the Hearing Committee at the beginning of the hearing on January 31, 1978. The Hearing Committee denied outright the Respondent's Motion To Dismiss Complaint Because Matters Not Brought To The Attention Of Respondent Were Considered In Processing And Approval Of The Formal Charges and Motion To Dismiss Proceeding Because Of Lack Of Separation Of Judicial And Prosecution Functions. The remaining motions (Motion To Dismiss Complaint Because It Goes Beyond Charges Approved By Review Member; Motion To Provide For Separate Adjudication Of This Motion; and Motion To Strike Recommendation Of Carl E. Glock, Jr., Esquire, Entered July 28, 1976, Because Of Bias) were denied, with leave granted to the Respondent to present evidence in his case in chief and renew his motions if appropriate. Respondent did not renew these motions.

Hearing was held as scheduled on January 31, February 1, and February 2, 1978. Charge 1 (the Kronzek complaint) was completed, and Petitioner put in much of its evidence and testimony in regard to Charges 2 and 3 during these three days of hearing. The hearings were open to the public and covered by various members of the media.

Hearing on this matter was then continued until February 21, 1978.

On January 31, 1978, a separate Petition for Discipline was docketed concerning the Respondent at No. 3 DB 78, and a Petition for Discipline was served upon the Respondent on February 9, 1978. On February 15, 1978, the Respondent filed with the Secretary a Motion To Dismiss And For Other Relief and an Answer On the Merits as to the Petition for Discipline at No. 3 DB 78. (This Petition was commonly referred to as "Charge 4" at hearing.) At the request of the Respondent, the Petition for Discipline was consolidated with the matter then under adjudication (43 DB 77) and referred to the same Hearing Committee (4.05).

The Respondent's filing contained motions lettered "A" through "M", which motions were considered by the Hearing Committee before accepting evidence in regard to Charge 4. The Respondent's Motion to Consolidate with No. 43 DB 77, Motion for Public Hearing, Motion Incorporating All Previous Motions, Motion to Examine Administrative File, and Waiver were granted by the Hearing Committee. The Respondent's Motion to Discharge because of Splitting of Causes of Action, Motion to Dismiss Proceeding Because of Relationship Between Disciplinary Counsel and Hearing Plus Review Members, Motion to Dismiss Proceeding Because of Violation of Article 1, Section 11 and 20 of the Pennsylvania Constitution, Motion for Prehearing Conference, and Motion to have Decision by the Supreme Court of Pennsylvania were all denied by the Hearing Committee. The Respondent's Motion to Dismiss Proceedings Because of Invidious Discrimination and Choice of Triers, Motion to Dismiss Proceeding Because of Prejudicial Prosecutor, and Motion to Discover Reason for Splitting No. 3 DB 78 from No. 43 DB 77, were all denied by the Hearing Committee, but with leave for the Respondent to present evidence in his

case in chief, and renew the motions if warranted. Respondent did not renew these motions.

The disciplinary hearing was continued on February 21, and held that day and February 22, 1978. Petitioner concluded its case on Charges 2 and 3, and the Respondent presented evidence in his case during these two days of hearing. The hearing was then continued until April 3, 1978, and held on that day and on April 4, 1978. The hearing was concluded on April 4, 1978, and the record closed, with both Petitioner and the Respondent having an opportunity to present oral argument to the Committee.

CHARGE 1

FINDINGS OF FACT

---

1. In about November, 1975, the Respondent agreed to represent the Kronzeks in a trespass action which had previously been instituted by other counsel against the Duquesne Light Company and the American-Russian National Home Club (hereinafter, "The Duquesne Light case"), which civil action involved fire damage to a tavern owned and operated by the Kronzeks. (N.T. 29, 137)

2. In regard to the Duquesne Light case, a compulsory nonsuit had been granted at trial on or about November 12, 1975, and the Kronzeks' trial attorney had filed with the court a Motion for New Trial and to Take Off Compulsory Nonsuit on November 17, 1975. (N.T. 17)

3. Prior to November, 1975, and until July, 1976, the Respondent represented Srul Kronzek, Morris Kronzek's father, in many legal matters, and the Respondent was usually paid by Srul Kronzek by post-dated checks. (N.T. 230)

4. At or shortly after the time of his employment, the Respondent agreed to represent the Kronzeks in the Duquesne Light case for a fee of $1,000, plus the payment of the cost of a transcript of the trial which had already been held in the case. (N.T. 29, 236; PE 3, PE 4)

5. It was agreed to and known by both the Respondent and the Kronzeks that Srul Kronzek was to pay the Respondent's legal fee for representing the Kronzeks in the Duquesne Light case. (N.T. 31, 138, 236)

6. Sometime before November 26, 1975 (PE 3), the Kronzeks went to the Respondent's office and delivered to him two checks totaling $500, which checks had been given to them by Srul Kronzek, and were drawn upon an account belonging to Srul Kronzek, in partial payment of the Respondent's legal fee for representing the Kronzeks in the Duquesne Light case. (P.E. 10A, 10B), (N.T. 41-42, 138).

7. By letters of November 26, 1975 (PE 3) and December 8, 1975 (PE 4), the Respondent demanded that the Kronzeks pay the $500 balance of the fee then owed, as well as $360 for the Respondent's purchase of a transcript in their case.

8. The Respondent later agreed to accept only the $1,000 fee and to pay for the transcript from his own funds. (N.T. 237)

9. After receipt of the Respondent's letter of December 8, 1975, Shirley Kronzek obtained a check from Srul Kronzek in order to pay the balance of the fee then owing the Respondent and delivered the check to the Respondent herself. (N.T. 138-140; PE 10C)

9½. By February 18, 1976, Respondent had received and cashed checks totalling $1,000, representing payment of his fee in the Duquesne Light Company case.

10. On or about May 10, 1976, after the Respondent had submitted a brief on behalf of the Kronzeks to the court (PE 16), the Kronzeks' Motion for Removal of the Judgment of Compulsory Nonsuit was denied. (N.T. 17)

11. On May 18, 1976, the Respondent sent a letter to Morris Kronzek informing him of the court's decision and indicating a possibility of securing a settlement offer from the Defendants in the case. (PE 5)

12. On May 24, 1976, the Respondent sent a letter to the Kronzeks informing them of a settlement offer in the amount of $750, and requesting from the Kronzeks a decision on to whether they desired him to accept the settlement offer on their behalf. (PE 6)

13. A short time after their receipt of the Respondent's letter of May 24, 1976, the Kronzeks informed the Respondent of their acceptance of the settlement offer brought to their attention by this letter. (N.T. 47, 142, 323)

14. The Respondent did not at any time during his representation of the Kronzeks demand any fee in addition to the $1,000 which he had received. (N.T. 141, N.T. 48)

15. On July 13, 1976, Srul Kronzek died (N.T. 17)

16. In late August, 1976, the Respondent received two separate checks from the respective insurers of Duquesne Light and the Russian Club, each in the amount of $375 made payable to the Kronzeks and the Respondent, as their attorney. (PE 9(a) and 9(b); PE 7)

17. After his receipt of these checks, the Respondent did not endorse and forward them to the Kronzeks, although his entire $1,000 legal fee for his handling of the Duquesne Light case had previously been paid. (N.T. 49, 143; PE 9(a) and 9(b); PE 7) Instead, the Respondent sent a letter to Morris Kronzek on September 10, 1976, and thereby transmitted to the Kronzeks the two settlement checks which remained unendorsed. Also, in that letter:

(a) The Respondent stated that he had been unable to negotiate three checks, specifically described in the letter, totaling $650 which had purportedly been given to him by the late Srul Kronzek for payment of legal fees;

(b) The Respondent requested that the Kronzeks endorse the two insurance settlement checks and return the checks to him; and,

(c) The Respondent promised that he would, upon his receipt of the endorsed insurance settlement checks, return to the Kronzeks the three checks totaling $650 which had been given to him by Srul Kronzek and which the Respondent could not negotiate and would additionally forward to the Kronzeks his personal check for $100. (PE 7; N.T. 142-143)

18. On September 14, 1976, Shirley Kronzek alone visited the Respondent at his law office. At the ensuing conference:

(a) Shirley Kronzek requested the Respondent to endorse the two insurance settlement checks which she had with her, and which she then presented and brought to the Respondent's attention;

(b) The Respondent refused to endorse the insurance settlement checks as requested by his client, but repeated the proposal set forth in his letter of September 10, 1976;

(c) The Respondent endorsed the three checks referred to in his letter of September 10, 1976 (PE 11(A), 11(B), 11(C)), payable to Shirley Kronzek's order, and gave the checks to her;

(d) Shirley Kronzek told the Respondent that she either would not or could not secure payment of his legal fees from the representatives of the Estate of Srul Kronzek. (N.T. 143-149)

19. On September 14, 1976, after Shirley Kronzek's meeting with the Respondent, the Kronzeks prepared, and Shirley Kronzek mailed, a letter to the Respondent, wherein demand was again made of him that he agree to endorse the two insurance settlement checks pertaining to their Duquesne Light case. (PE 8; N.T. 143, 50)

20. On October 1, 1976, Shirley Kronzek filed a disciplinary conplaint against the Respondent.

21. The Respondent persisted in his refusal to endorse the two insurance settlement checks or to inform the Kronzeks of his willingness to do the same, through the time of disciplinary hearing.

CHARGE 1

DISCUSSION

Assistant Disciplinary Counsel contends that the Respondent violated five separate sections of the Disciplinary Rules as follows:

1. The Respondent violated DR7-101(A)(2) and DR7-101(A)(3) by initially failing and later refusing to endorse the two insurance settlement checks, the proceeds of which in their entirety belong to the Kronzeks, despite having been requested by his clients to do so.

2. The Respondent violated DR9-102(B)(3) in that he failed to render an appropriate account to his clients regarding the settlement proceeds by wrongfully asserting a "lien" over the settlement checks, and never informing the Kronzeks of his position as to what portion of the proceeds, if any, represented fees not collected by the Respondent.

3. The Respondent violated DR1-102(a)(6) and DR9-102(B)(4) in failing to endorse and give over the insurance settlement checks and thereby pay to the Kronzeks the proceeds of the settlement of their cause of action in the Duquesne Light case.

Preliminarily, the Hearing Committee notes that the proper standard of proof in disciplinary proceedings is not proof beyond a reasonable doubt, but is a preponderance of evidence which is clear and satisfactory. *In Re Berlant,* 328 A.2d 471 (1974).

The Respondent represented Srul Kronzek in many legal matters and was usually paid with post-dated checks.

In November, 1975, the Respondent undertook to represent Morris and Shirley Kronzek in the Duquesne Light case with the fee to be paid by Srul Kronzek. After the initial meeting, all of the correspondence on the case originating from the Respondent was sent to Morris Kronzek. PE 3, 4, 5, 6, 7. The letter from the Respondent dated September 10, 1976 (P.E. 7) contains this sentence: "Of course, the $750 is yours because Mr. Kronzek paid me a fee to do the work." The Respondent then attempted to enlist Morris and Shirley Kronzek to act as his collection agents in obtaining payment of three checks issued by Srul Kronzek who had died on July 13, 1976. Said letter also contained this sentence: "I would suggest that it is easier for you to get the money from Mr. Golding (attorney for the Srul Kronzek Estate) than for me to waste my valuable time when the money, which I received for doing my work is not now available."

The Respondent seemingly contends that he is not certain that his entire fee of $1,000 has been paid for the Duquesne Light case or in the alternative that he was representing Srul Kronzek in that case and had a right to exercise a lien over the $750 insurance settlement because of $650 due him for other cases, as represented by three checks, one dated December 6, 1976 for $200, one dated November 10, 1976 for $200 and one dated July 29, 1976 for $250. The Hearing Committee is satisfied by a preponderance of the evidence that the Respondent was paid his fee of $1,000 for the Duquesne Light case months before September 10, 1976 and that he was representing Morris and Shirley Kronzek.

Since the Hearing Committee finds that Morris and Shirley Kronzek were Respondent's clients in the Duquesne Light case, the assertion of a lien for money due from Srul Kronzek in other cases is not justified.

Any confusion regarding the various checks issued by Srul Kronzek would be avoided if the Respondent had kept proper records of payments in a case by case basis. This he did not do.

Thus, the Respondent violated DR7-101 (A) (2) and DR7-101 (A) (3) by initially failing and later refusing to endorse the two insurance settlement checks, the proceeds of which in their entirety belong to the Kronzeks, despite having been requested by his clients to do so.

The Respondent violated DR9-102 (B) (3) in that he failed to render an appropriate account to his clients regarding the settlement proceeds by wrongfully asserting a "lien" over the settlement checks, and never informing the Kronzeks of his position as to what portion of the proceeds, if any, represented fees not collected by the Respondent.

The Respondent violated DR1-102 (A) (6) and DR 9-102 (B) (4) in failing to endorse and give over the insurance settlement checks and thereby pay to the Kronzeks the proceeds of the settlement of their cause of action in the Duquesne Light case.

CHARGE 2

FINDINGS OF FACT

---

1. On March 2, 1971, the City of Pittsburgh and its Treasurer, Joseph L. Cosetti, filed a complaint in as-

sumpsit against the Respondent to collect delinquent business privilege taxes allegedly owed by the Respondent (PE 20-A).

2. In December, 1972, the Respondent served Interrogatories and Additional Interrogatories (PE 20-I) upon Harris, and Harris and the Respondent eventually entered into a stipulation dated December 29, 1972, requiring that the Respondent file an Answer to the complaint within twenty days after answers to the various interrogatories had been filed and served (PE 20-H; N.T. 454-455).

3. On March 20, 1973, Harris filed and served on Respondent, Answers to the Interrogatories and Additional Interrogatories which were complete on their face. (PE 20-I; PE 30; N.T. 456).

4. No Motion For Sanctions or other form of challenge to the adequacy of the Answers to the Interrogatories was filed of Record or orally discussed with Harris by Respondent, prior to July 24, 1973 (PE 20; N.T. 464, 467).

5. Between March 20, 1973 and July 24, 1973, Harris, on several occasions, orally reminded Respondent that his Answer to the Amended Complaint in Assumpsit in the *City of Pittsburgh* case was due according to the terms of the Stipulation of December 29, 1972 (N.T. 465-467).

6. On July 24, 1973, Harris presented a Praecipe for Judgment of Default, which was duly filed in the Office of the Prothonotary in the Arbitration Division (PE 20-J; N.T. 467). Respondent was notified by Harris of the default judgment by letter of July 24, 1973 (PE 31).

7. The default judgment was entered on the docket of the *City of Pittsburgh* case and was duly indexed in the judgment index. The judgment, as indexed, was regular on its face.

8. The Praecipe for Default Judgment was accepted for filing by Frances Grzelka, a Clerk in the Arbitration Division of the Prothonotary's Office.

9. During the period between July 24 and August 24, 1973, beginning one or two days after the filing of the Praecipe for Default Judgment on July 24, 1973, Respondent called Grzelka at least ten (10) times and urged him to strike the judgment from the docket and from the General Judgment Index (N.T. 810-811).

10. Respondent asked Grzelka to deliver the original Praecipe to him (N.T. 810, 875).

11. Respondent offered to provide ink eradicators to Grzelka if he would remove the judgment entries from the Record (N.T. 812, 943-4).

12. Shortly before August 24, 1973, the Respondent orally threatened to sue Grzelka as a result of Grzelka's refusal to remove the default judgment in the *City of Pittsburgh* case (N.T. 816).

13. Grzelka repeatedly advised the Respondent to present a Motion or Petition to the Court to strike or open the default judgment and further stated repeatedly to the Respondent that he (Grzelka) did not believe that he had the authority or power to remove or erase the default judgment (N.T. 809-812).

14. Grzelka did not, under the circumstances, have the power or authority to remove or erase the default judgment (N.T. 1315, 1326).

15. As a result of these actions by Respondent, Grzelka complained to Harris he was being "terrorized" by Respondent (N.T. 861).

16. Between August 6, 1973, and August 13, 1973, Harris and the Respondent exchanged letters as follows:

(a) By letter of August 6, 1973, Harris warned the Respondent against further harassment of Prothonotary "clerks" and requested that the Respondent move to have the default judgment opened by motion of the Court; (PE 33)

(b) By letter of August 8, 1973, the Respondent informed Harris that he did not consider the Interrogatories fully answered; that he had intended to bring the matter to the attention of the pretrial judge "but did not have time available because I was engaged daily in many trials"; that he would petition the court to remove the judgment if Harris did not agree to remove the same within 72 hours of the date of that letter. (PE 34)

(c) On August 13, 1973, the Respondent again wrote to Harris and requested to know whether she agreed to open the judgment. (PE 35)

(d) In response to the Respondent's letter of August 13, 1973, Harris wrote the Respondent on the same day, and informed him that she did not intend to open or withdraw the default judgment which had been entered in the case. (PE 36; N.T. 483)

17. The Respondent did not present a motion or petition to the Court, or take any other action, to open or remove the judgment in the *City of Pittsburgh* case until October 12, 1973, when the Respondent filed and served

upon Harris a Motion to Strike and/or Open Judgment. (PE 20-K)

18. On October 17, 1973, Judge John J. McLean, Jr., entered an order refusing the motion of the Respondent to strike or open the judgment, for the reasons set forth in an Opinion attached thereto. (PE 20-L)

19. On August 24, 1973, the Respondent commenced legal action against the City of Pittsburgh, Harris, and Grzelka by filing a praecipe for writ of summons in equity and trespass (the *"Brunwasser"* case). (PE 21-A). Harris and Grzelka were sued in their individual capacities.

20. The writ of summons, if it was ever issued, was never served on Harris or Grzelka (PE 21; N.T. 817).

21. On August 29, 1973, Counsel for the City of Pittsburgh and Harris, (Strassburger), and counsel for Grzelka (James R. Fitzgerald, Esquire), filed a praecipe for rule to file complaint against the Respondent, which rule was served upon the Respondent on August 30, 1973. (PE 21; 21-B). By letter of September 7, 1973, Strassburger reminded Respondent of the impending judgment of nonpros. (PE 39)

22. Respondent served on Strassburger a "Preliminary Objection to Rule to Show Cause" and Interrogatories with his letter of September 6, 1973. (PE 38, 21-C, 21-D). Respondent had not secured leave of court to file his Interrogatories. Both papers were forwarded to the Prothonotary for filing with Respondent's letter of September 10, 1973 (PE 40). Both papers, due to inadvertence in the Prothonotary's Office, were not properly filed or docketed.

23. Strassburger filed objections to discovery on September 14, 1973. (PE 21-E; N.T. 993).

24. The Respondent neither filed his complaint nor secured a stay of the rule secured by Strassburger before September 21, 1973. (PE 21).

25. On September 21, 1973, Strassburger filed a praecipe for judgment of non pros, which judgment was entered of record. (PE 21; 21-F; N.T. 997).

26. Sometime shortly thereafter, Respondent, by ex-party action procured an order from the Prothonotary striking the judgment of non pros, although the order was never carried out on the Record. (PE 21-O). Respondent orally notified Strassburger of that action. (N.T. 998).

27. Thereafter, Strassburger served upon the Respondent a Motion for Judgment of Non Pros which was scheduled for argument on October 12, 1973. (PE 41 and 42; N.T. 1000)

28. On October 12, 1973, Respondent submitted to Judge Silvestri a Motion to Extend Time for Filing Complaint (PE 21-H) which the judge refused. Thereafter, the judge granted Strassburger's Motion For Judgment of Non Pros. (PE 21-G)

29. On October 16, 1973, upon petition of the Respondent, the Court granted a rule on the City of Pittsburgh and Harris to show cause why a judgment of non pros entered on October 12, 1973, should not be vacated (PE 21-J).

30. On October 18, 1973, Strassburger filed an Answer to the Respondent's Petition to Open Judgment of Non Pros (21-K). Respondent did not thereafter either

take depositions on disputed issues of fact or order the cause for argument on the Petition and Answer. Whereupon, Strassburger did, on November 5, 1973, secure a rule upon the Respondent to proceed under Rule 209 to do one or the other, which rule was served upon the Respondent on November 7, 1973. (PR 21-P and 21-L).

31. When the Respondent still did not proceed under Rule 209, Pa. R.C.P., the rule was made absolute by order of court dated November 16, 1973, (PE 21-M), and on December 4, 1973, after the Respondent still had taken no action of record, Strassburger praeciped the case for argument. (PE 21-N).

32. On January 8, 1974, after argument before Judges Brown and Silvestri, Judge Silvestri discharged the Respondent's rule to show cause why the judgment of non pros should be vacated and entered an opinion and order. (PE 21-P).

33. In the course of the Rule 209 procedure, Respondent, on November 19, 1973, wrote to the Prothonotary of Allegheny County and stated that a motion to require Harris and Strassburger to file warrants of attorney in both the *City of Pittsburgh* and the *Brunwasser* cases had been filed on November 13, 1973. In that letter, the Respondent requested that the Prothonotary accept no further pleadings from either Harris or Strassburger until warrants of attorney were so filed by them. (PE 43)

34. No motion for a warrant of attorney was ever filed in the *Brunwasser* case by the Respondent, and the Respondent never attempted to secure a ruling on any motion or obtain a court order requiring the filing of warrants of attorney by Harris or Strassburger in either of the cases. (PE 21; N.T. 378).

35. Although not having filed any motion for warrant of attorney in the *Brunwasser* case, and having secured no order of court to compel Harris and Strassburger to file any warrants of attorney, the Respondent wrote again to the Prothonotary on December 5, 1973, and demanded that a pleading filed by Strassburger in the *Brunwasser* case be removed from the docket. (PE 44)

36. The Respondent appealed both the *City of Pittsburgh* case (the order of Judge McLean of October 17, 1973), and the *Brunwasser* case (the order of Judge Silvestri of January 8, 1974) to the Commonwealth Court, which Court in both instances affirmed the lower court decisions, per curiam, on November 19, 1974. (PE 32; PE 45).

37. The Supreme Court of Pennsylvania subsequently denied the Respondent's Petition for Allowance of Appeal. (PE 50).

CHARGE 2—DISCUSSION

Respondent is charged with violation of DR 7-102 (A) (1), which states that:

> (A) In his representation of a client, a lawyer shall not:
>
> (1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or it is obvious that such action would serve merely to harass or maliciously injure another.

In addition, he is charged with violation of DR 7-106 (C) (7), intentionally or habitually (violating) any established

rule of procedure or of evidence, DR 1-102 (A) (5), engaging in conduct that is prejudicial to the administration of justice, and DR 1-102 (A) (6), engaging in any other conduct that adversely reflects on his fitness to practice law.

The transcript of the Record runs to more than 1000 pages on this Charge and Charge 3, which is related. Disciplinary Counsel (D.C.) has simplified our task somewhat by electing not to press the charges with respect to alleged harassment by the pleadings and practices in the Assumpsit suit for delinquent taxes, *Pittsburgh v. Brunwasser*, and with respect to the alleged pressure applied to Francis Grzelka, Clerk in the Prothonotary's Office.

We will therefore not address these matters as separate potential violations of the Code, but only as they provide background or indicate motivation as to subsequent events.

Disciplinary Counsel relies on three elements to establish violations of the four Code provisions above:

> (A) The filing of a legal action against Grzelka and Harris,
>
> (B) The conduct of that suit by Respondent,
>
> (C) Actions relating to a demand for warrants of attorney in that suit.

The gravamen of these allegations is that Respondent's actions were intended to harass and maliciously injure the defendants and he consequently exceeded allowable bounds in the use of process and practice. The Committee is satisfied that violations of the Code have been committed by Respondent and we will discuss them in the context of the three elements referred to above.

(A) THE FILING OF A LEGAL ACTION AGAINST GRZELKA AND HARRIS:

The Committee readily recognizes that access to the Courts is a fundamental right guaranteed to all by our Federal and State Consitutions. Lawyers are not denigrated to the level of second class citizens when this right is called into question. The burden on the Petitioner to prove this charge is substantial and one not taken lightly, and the issue presented is novel and one not easily decided. Although a law suit may be groundless or even frivolous, unless the sole motivation of the lawyer is to harass or maliciously injure, no violation of DR 7-102(A)(1), will be established.

However, the evidence does not establish that Respondent had either factual or legal basis for his suit against Grzelka and Harris. The Committee therefore concludes that he sued them as a punitive measure, because they would not remove the judgment taken against Respondent in the Assumpsit case for delinquent taxes.

To examine his motivation, we must consider earlier events. The judgment was properly entered and was valid on its face. Respondent's position that there were outstanding, unanswered Interrogatories is unsound in the view of the Committee, considering the Answers filed, and the extremes he went to relying solely on this justification become all the more suspect. The adamant refusal of Respondent to use the proper remedies provided by the Rules of Civil Procedure leave no room for sympathy or doubt. We reach this conclusion without relying on the Opinion of Judge McLean but merely noting his strong concurrence with our conclusion. (PE 20-L).

Without a valid legal argument with which to attack the judgment, Respondent turned to a course of personal contact and persuasion which undoubtedly rose to the level of intimidation. Grzelka was his main target. Finding of Fact 8 through 15 itemize Respondent's strange series of telephone calls, visits, threats to sue, demand to turn over to Respondent the original filed Praecipe for Judgment, and his offer to provide ink eradicators to alter public records. Respondent admitted this last, incredible act in the course of his cross-examination of Grzelka. (N.T. 943). The latter's statement that he felt "terrorized" is understandable. (N.T. 861).

It is the experience of this Hearing Committee that Grzelka correctly stated to Respondent both the limits of his authority to change a public record and the proper recourse open to Respondent, (Findings of Fact 13, 14).

The Committee observes that Grzelka, in the manner as well as the content of his testimony, established himself as a believable witness and a diligent, experienced and knowledgeable public employee of the Prothonotary. Respondent's repeated accusations that Grzelka was a liar and was lying were not well founded and appear to have been inserted for effect, i.e., intimidation. (N.T. 812-815).

With regard to Harris, Respondent's personal contacts with her were stormy. In this hearing, Respondent spent an excessive amount of time to establish that Harris was biased and prejudiced against him, as a means of impeaching her credibility. Harris made no secret of the fact that she was very upset with Respondent. However, it was not necessary to determine this impact on her credibility since virtually all of the critical facts were documented in the unchallenged exhibits.

It is true that the Record contains a history of personal attacks on Harris by Respondent belittling her position and performance as an attorney and the general tenor of his examination of her in this proceeding was more akin to an effort at total destruction than anything else, but the Hearing Committee notes that Harris dealt to Respondent nearly as much as she received over the course of their contacts. Had Respondent's actions stopped there, motivation for the later Code violation against Harris would have been uncertain.

But the exchange of correspondence between Respondent and Harris between August 6 and 13, 1973, just days before August 24, 1973, offers strong evidence of Respondent's intention and motivation. (Finding of Fact 16). Harris's two letters (PE 33 and 36) were professional and correctly instructed Respondent on his legal options. Her threat of disciplinary action cannot be said to be unreasonable in view of Grzelka's complaint to her, (N.T. 861) and the fact that the judgment was one she had filed. Respondent's replies (PE 34 and 35) are harder to explain. A reading of these two letters shows Respondent is argumentative and threatening. He refers to blackmail, promises suit for damages, charges libel, and make a variety of veiled threats about Harris's job, official misbehavior, etc. A clearer case of attempted intimidation would be hard to imagine. This is strong evidence of Respondent's state of mind at this time.

And so we come to August 24, 1973, when Respondent filed his strange hybrid pleading. It was unusual in that he combined equity and trespass in his summons. It was confusing in that he sued Grzelka and Harris in their individual capacities and failed to name an appropriate

officer-defendant for the City of Pittsburgh. Were these merely mistakes, or sloppy practice, or daring innovation innocent of malice?

This Hearing Committee thinks not. Harris and Grzelka shared only one experience. Each had refused to remove the default judgment, and in doing so, had disagreed with Respondent's conception of justice as applied to his own case. The strong preponderance of the evidence establishes, in the view of the Committee, that Respondent was retaliating and in so doing, it was Respondent's settled purpose intended to harass and maliciously injure Harris and Grzelka.

Respondent's own testimony was not clear and consistent on his motivation. He states he sued in equity "to get the case going because I was aware that delay would prevent me from getting the Judgment opened." (N.T. 1154). He earlier testified he told Grzelka he was suing him "for the damage you caused me." (N.T. 878). Later he combined the two and claimed the suit was to get both equitable relief and money damages. (N.T. 1178-9). Still later, he stated that he filed the Summons in Equity to avoid spending a whole afternoon in Court during hay fever season while waiting to present the Petition (to Open Judgment). (N.T. 1273).

Again, Respondent said he sued Grzelka in equity "to have him ordered to do what he said he would not do." (N.T. 1279). Similarly, Harris was sued "to force her to undo what I thought was improper action." (N.T. 1279). In Exhibit "S", Respondent wrote Harris the action was "to attack the tax assessment and the ordinance or regulations." (N.T. 1281).

Respondent's explanation why he sued Grzelka instead of the Prothonotary, his friend, was because "he had done nothing to wrong me." (N.T. 1291). His tortured account of how the Prothonotary might not have been able to alter the Record under Court Order, "because of diplomatic or political reasons in the office" is simply incomprehensible. (N.T. 1294).

One of the most fascinating portions of the transcript was the incredibly rapid footwork by Respondent under interrogation by Committee Members as to whether Grzelka had been joined to teach him a lesson. Respondent denied this but conceded he did not need Grzelka (or the Prothonotary) in the suit since he could get relief by an Order on Mrs. Harris "to go over and file a paper to remove the judgment." (N.T. 1295-1296).

The act of suing Grzelka and Harris, under all of the circumstances, was clearly an act of retaliation. It could only be explained by the intent to harass or maliciously injure. That Grezelka was so upset (N.T. 816) merely confirms that Respondent achieved his purpose.

(B) THE RESPONDENT'S PRACTICE AND PROCEDURE IN THE SUIT AGAINST GRZELKA, HARRIS AND THE CITY OF PITTSBURGH.

Petitioner alleges further Code violations because of the bizarre filings and procedure by Respondent. Breaches of not only the harassment Rule DR 7-101 (A) (1), but also DR 7-106 (C) (7), relating to trial practice, "Intentionally or habitually violate any established rule of procedure or of evidence", were charged. We are however, of the opinion the latter charge is not established. A careful reading of DR 7-106 indicates it is limited to Trial Conduct and the

seven specific prohibitions deal with conduct in the trial and before the tribunal itself. The evidence against Respondent deals primarily with the kind and timing of pleadings and motions prior to trial.

We thus direct our inquiry again to DR 7-102 (A) (1), whether such practices were intended to harass or injure Grzelka and Harris either alone or as a continuation of the harassment involved in bringing the suit.

At the same time Disciplinary Counsel has acknowledged that it has assumed a heavy burden of proof. Merely innovative practice should not be the subject of disciplinary action, as the Rules of Civil Procedure are to be liberally construed. Thus, did Respondent's handling of this poorly conceived lawsuit in the fashion depicted by the Record go far beyond any reasonable definition of fair practice, as to constitute harassment to a point worthy of disciplinary action?

The Committee is satisfied Respondent's behavior exceeded permissible limits and deserves disciplining. Any single element may not indeed have warranted such response, but the sum of Respondent's actions, considering the acts themselves, their timing, frequency and disruptive qualities, are too much to countenance and excuse.

A mere catalog of Respondent's strange, even bizarre tactics is illuminating. First, Respondent chose equity as a cause of action to open a judgment procured at law. (N.T. 1272). A lawyer of Respondent's experience presumably knew this was an inappropriate kind of lawsuit. The cases he cited confirm this. A court of equity has no power to open or set aside a judgment. It does have power to restrain its enforcement if it was procured by fraud. Wiesman v. Martorano, 405 Pa. 369 (1961). We are unaware

of any allegation of fraud or the kind of self dealing of the *Wiesman* case contained in the instant judgment.

Nor can Respondent rely on the Restatement of Judgments, Section 125, which limits equitable relief from a valid judgment where circumstances arise *after* the judgment which make enforcement inequitable. See Atlas Credit Corporation vs. Dolbow, 193 Pa. Superior Ct. 649 (1960).

Secondly, Respondent chose to join Equity and Trespass in a single suit. It is clear that the Pennsylvania Rules of Civil Procedure provide the exclusive means of access at law to the Courts. Thus, the only allowable pleadings are those set out in Pa. R.C.P. 1017. Likewise, the only actions at law are those specified in the Rules 1001-1458. The mating of Trespass and Assumpsit in a single suit required a special Rule, Pa. R.C.P. 1020(d). There is no such authorization for joining Equity and Trespass. Respondent made it clear this was not merely an alternative pleading but that he expected relief from both causes. It must also be remembered that this polyglot pleading was at least in part, for the purpose of opening a judgment, for which there was already an adequate procedural remedy.

Thirdly, even the procedure on entry of suit was defective. The docket entries show Respondent never bothered to have the Summons served (PE 21), if indeed it was ever issued at all. Grzelka confirms there was no service. (NT 817). The only notification to Harris and Grzelka came parenthetically in letters to Harris (as in PE "M" dated August 30, 1973).

When Defendants promptly ruled Respondent to file his Complaint, Respondent sought to postpone this by several tactics. He mailed "Preliminary Objections to the

Rule" and extensive Interrogatories. Each was objectionable. Preliminary Objections are not authorized anywhere in the Rules against a Petition or Motion For a Rule to Show Cause or against the Rule. The appropriate response would be an Answer. The Interrogatories were filed within twenty days of service of the initial process, in violation of Pa. R.C.P. 4005(a). Respondent well knew this because he recited this very Rule in his Preliminary Objections. It is not clear whether Respondent even filed these documents of record at this time. They weren't docketed until months later (February 6, 1974), although Prothonotary Joyce accepted responsibility for this delay. In any event, we cannot understand how these unauthorized and ineffective papers could serve as any basis for striking the first judgment of non-pros, as Joyce did on January 29, 1974, sua sponte.

On September 10, 1973, Respondent sent a letter to Prothonotary Joyce which purports to enclose his Preliminary Objections and his Interrogatories, but then goes on to instruct the Prothonotary that he is not to permit the entry of a judgment of non-pros (PE 40). We find such extra-judicial instructions most unusual.

Eventually, on October 12, 1973, Respondent tried again to delay matters and gain additional time, petitioning for an extension of time to file a Complaint. The Court, however, denied his Motion (PE 21).

When the Court granted the Motion of the Defendants for a judgment of non-pros on October 12, 1973, Respondent moved for and got on October 16 an Order for a Rule to Show Cause Why the Judgment of Non-Pros should not be vacated. When Respondent failed to act, the Court, on November 16, ordered him to follow the procedure in Pa.

R.C.P. 209. Respondent, however, failed to do so, neither taking depositions on disputed issues of fact or in the alternative, ordering the cause for argument on Petition and Answer, and on December 4, Defendants forced the issue by filing a Praecipe for Argument.

The status of Grzelka in the suit during these later stages is the subject of much confusion. Respondent repeatedly testified that he terminated his action against Grzelka after a conference with Attorney Fitzgerald. However, he filed no discontinuance. Nor did he take any other action on the Record to accomplish this and Grzelka remained a party on the Record (NT 972, 977). His frequent representations that he had discontinued the case against Grzelka (N.T. 822-3, for example) and in Appellate proceedings (N.T. 972) were at least misleading, if not in fact misrepresentations of fact.

This account of unorthodox and inept practice in fact provided the Court, all counsel, and all parties with a most frustrating experience. If Respondent was the experienced and talented lawyer which he represented himself to be, this total course of practice can only be explained as a further effort to confuse the situation and harass the parties. The timing, frequency and quality of these actions are most convincing on this point.

Respondent was representing himself in the suit against Grzelka and Harris. We have already concluded that the legal merits of his tactics were questionable. Perhaps not coincidentally, the Court ruled against him at every challenge. In a real sense, he was the primary victim of his ineptitude, but the thought that these consequences might be visited on an innocent and unknowing client is a sobering thought this Committee must at least contemplate.

(C) ACTIONS RELATING TO A DEMAND FOR WARRANTS OF ATTORNEY.

At this juncture, Respondent invoked what may have been the most petty and harassing tactic of all. On November 19, 1973, he wrote the Prothonotary asserting he had filed Motions to require Harris and Strassburger to file Warrants of Attorney in the equity matter. (PE 43, 44).

It is worth noting that with regard to the timing, this was at the precise time that Respondent was ignoring the Court Order of November 16, 1973 and failing to proceed as required under Pa. R.C.P. 209. Substantively, demanding proof of representation at this late stage seems to this Committee an effort to prevent effective defense action on behalf of the Defendants by devious means.

But again, what Respondent wrote and what he did were two different things. He never filed any Motion to require a Warrant of Attorney in the equity matter. None appeared on the docket entries. (PE 21). He apparently did file such a Motion on Harris in an execution action (No. 5453 of 1973) and this may have been the notice referred to as the last docket entry in the case of *City of Pittsburgh v. Brunwasser,* the assumpsit case for delinquent taxes. In addition, he may have mailed a similar Motion to Strassburger . . . no more (N.T. 1004).

And yet, on the basis of this quixotic action, Respondent importuned Prothonotary Joyce in two letters (PE 43 and 44) to refuse Defendants access to the proceedings in the equity-trespass action. A reading of these letters reveals just how outrageous Respondent's demands were. Respondent has argued that the mere filing of a Motion is sufficient to invoke the applicable statutory provisions.

Even if this were true, he never filed any such Motion in the equity-trespass action.

But beyond this, we do not understand that such a Motion is, under the law, self-executing.

The Act of 1834 (17 P.S., 1632) provides that the attorney for the defendant shall, "if required", file his warrant of attorney with the Prothonotary. The Rule apparently is that the Court must do the requiring on the basis of a Rule or Petition of a party. Gliwa vs. U.S. Steel, 322 Pa. 225; Roberts vs. Peoples Cab Company, 102 P.L.J., 247 (1954). The *Roberts case* represents a flat holding that an attorney may not, with his own initiative and without the aid of the Court, require opposing counsel to file his warranty of attorney. In Commonwealth vs. Serfass, 5 Pa. C.C., 139 (Delaware), held that a Rule to require the filing of a warrant is not of course, but must be allowed by the Court.

This Committee is satisfied that the inept use of this tactic was merely a ploy designed to delay and impede the handling of the equity-trespass case. The very letters to Prothonotary Joyce give Respondent away. He was so anxious to deny access to the Courts to his opponents that he never even bothered to perfect the device he was relying on.

It should be noted that our conclusion that harassment was the purpose and result of the use of the Motion to File a Warrant of Attorney is confined to the equity-trespass case. As indicated earlier, we are not examining the tactics of Respondent with regard to the assumpsit case per se, but only as they reflect on the motivation for action in the equity-traspass case. In conclusion of this review of Charge 2, the Committee finds that the Findings of Fact and the

above Discussion merely justifies a finding that Respondent violated DR 7-102(A)(1), relating to legal action "to harass or maliciously injure another." We further find that the above recited tactic by Respondent constituted engaging in conduct that is prejudicial to the administration of justice in violation of DR 1-102(A)(5). It also constituted engaging in other conduct that adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(6).

We have already noted that Respondent's conduct does not represent a violation of DR 7-106(C)(7) for the reasons above stated.

CHARGE 3—FINDINGS OF FACT

---

1. In December of 1974, the Respondent filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, seeking review of the Order of the Commonwealth Court which had affirmed the lower court in the case at No. 2621 October Term, 1973. (PE 50).

2. On page eight of the Petition for Allocatur, the Respondent made specific reference to then-ongoing marital problems between Strassburger and his wife, by stating, ". . . he and his wife are fighting and what she said about him in the Allegheny County Common Pleas Court, Family Division, at No. D3226 of 1974 . . ." (PE 50).

3. In this same Petition for Allocatur, the Respondent also cited at least a half dozen lower court cases handled by Strassburger or Harris, which were *dehors* the record, with accompanying derogatory references and remarks. (PE 50).

4. Strassburger, counsel for some of the defendants in the *Brunwasser case,* referred in his Briefs in the Court below and the Commonwealth Court to prior reported cases in which the alleged dilatory tactics of Respondent were commented on by various courts. These cases in no way referred to the facts of the *Brunwasser case.* The use and citation of these cases appeared to be directed at Brunwasser rather than a rule of law. (N.T. 1071-1075).

5. The Petition for Allocatur was subsequently denied by the Supreme Court of Pennsylvania. (PE 51).

CHARGE 3—DISCUSSION

Petitioner proposes that various derogatory remarks made by Respondent in his Petition for Allocatur in the equity-trespass case, particularly that pertaining to Strassburger's marital problems, represented a character assassination of sufficient severity to reflect adversely on Respondent's fitness to practice law under DR 1-102 (A) (6).

Petitioner also asserts that this conduct represented such further harassment as to constitute a violation of DR 7-102 (A) (1).

The Committee does not conclude that Respondent's conduct in this respect constituted a violation of any Disciplinary Rule. We are of the opinion that Respondent's personal references may have been in incredibly bad taste, may even have been maliciously employed, but we do not conclude that they represent disciplinary violations.

We reach this conclusion for the reason that Respondent's remarks were offered in the course of argument and this being under the direct control of the Court, the Court was in a position to comment or take its own appropriate

action. Moreover, Strassburger had the opportunity to respond and even ask the Court for protection.

Strassburger may, to a lesser extent, have invited retaliation. We recognize the difference between Respondent's statements and Strassburger's earlier references to the comments of other Courts about dilatory tactics of the Respondent in other cases, but believe that the difference may be a narrow one. In each case, the derogatory comments were directed at opposing counsel, personally, rather than to the issue at hand. We believe this is improper and should not be condoned but do not believe that the disciplinary system should substitute itself for the Courts in responding to personal attacks by counsel while directly before and under the control of the Court.

CHARGE 4
FINDINGS OF FACT

---

1. At all times relevant to the facts hereinafter recited, Respondent occupied Suite 903-B in the Grant Building, Pittsburgh, Pennsylvania, under an Agreement of Lease entered into between Grant Building, Incorporated, as Lessor, and Respondent, as Lessee, and Oliver Realty (sometimes referred to in the transcript as Oliver Realty, Inc.) was the duly appointed managing agent for said building. (N.T. 1565, 1577; P.E. 58).

2. On December 3, 1976, a writ of execution was delivered to the Office of the Sheriff of Allegheny County, Pennsylvania, from the Office of the Prothonotary of the same county, directing the Sheriff to levy upon and sell the property of Respondent to satisfy a judgment which had

been entered against him in favor of the City of Pittsburgh and Joseph L. Cosetti at Sur Judgment No. 1582 of 1971, in the Court of Common Pleas of Allegheny County, Pennsylvania. The said writ of execution issued to and was docketed at Execution No. 5453 of 1973, in said Court. (N.T. 1507, 1508; P.E. 56).

3. On December 15, 1976, Clifford H. Zigler a Deputy Sheriff for Allegheny County, Pennsylvania, executed said writ by going to the Respondent's said office and levying upon certain items of personal property of Respondent. A sale was scheduled for January 5, 1977, at 1:00 o'clock, P.M., and due notice thereof was given to Respondent and the public according to law. (N.T. 1509, 1533, 1549).

4. Between the date of levy, December 15, 1976, and the scheduled date of sale, January 5, 1977, Respondent took no formal action to obtain a stay of said execution or a continuance of the sale. (N.T. 1612).

5. On January 5, 1977, the Deputy Sheriff appeared at Respondent's office approximately twenty (20) minutes early prepared to conduct a sale at the prescribed time. (N.T. 1538).

6. At the time that the Deputy Sheriff appeared at Respondent's office prepared to conduct his sale, Respondent was engaged in litigation in the Allegheny Court Courthouse. (N.T. 1550).

7. Observing that a sale was imminent, Respondent's secretary called him at the Allegheny County Courthouse to inform him of that fact. The Respondent thereupon made two (2) telephone calls in an attempt to stop the sale. When this proved unsuccessful, he drafted a goods claim for his landlord, signed it by himself "For Claimant", and gave it to his daughter, Ina, for delivery to the Sheriff's office. (N.T. 1592, 1593; P.E. 52, P.E. 53).

8. The filing of said property claim effectively caused a continuance of the scheduled sale. (N.T. 1515).

9. After Respondent was able to leave the Allegheny County Courthouse on January 5, 1977, he caused a formal, typewritten Property Claim to be prepared and filed in said Sheriff's office for Oliver Realty, Inc., the managing agent for the Grant Building. (N.T. 1593; P.E. 55).

10. At the times that Respondent executed and caused said Property Claims to be filed in the Sheriff's office, his rent was not in arrears, he had not been retained by his landlord to file same, and he had never previously represented his landlord in any manner whatsoever. (N.T. 1567, 1568, and 1569).

11. Respondent was never specifically authorized by his landlord to file said Property Claims. (N.T. 1579, 1583, and 1617).

12. At the times that Respondent caused said Property Claims to be filed in the Sheriff's office, it was his intention to at least partially serve his own purpose of saving his personal property from a forced sale. (N.T. 1609).

CHARGE 4—DISCUSSION

The Petition for Discipline in this case avers that, by his conduct, Respondent has violated the following Disciplinary Rules of the Code of Professional Responsibility:

(a) "DR 1-102 Misconduct.

(A) A lawer shall not:

. . .

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

. . ."

(b) "DR 7-102 Representing a Client within the Bounds of the Law.

(A) In his representation of a client, a lawyer shall not:

. . .

(5) Knowingly make a false statement of law or fact.

. . ."

In filing Property Claims in behalf of his landlord without first seeking his landlord's authority or permission to do so, Respondent has clearly violated DR 1-102 dealing with misconduct.

The Hearing Committee is satisfied from a reading of the entire record that Respondent's actions in this case were selfishly motivated. His concern was for himself and not his landlord. When faced with the prospect that the City of Pittsburgh, through some of its legal staff with whom he had been feuding, was about to sell his office furniture, Respondent wrongfully stopped the sale by filing Property Claims in behalf of his corporate landlord which had never sought his services or assistance. In doing so, he represented to the Sheriff of Allegheny County, Pennsylvania, that his landlord was concerned about the loss of title to or a security interest in some personal property of very little value. Since the record is clear that Respondent's landlord had no such concerns, Respondent's actions in-

volved dishonesty, deceit, and misrepresentation. Its effect was also prejudicial to the administration of justice because it prevented a sale on a legal writ of execution.

The Respondent's argument that he should be absolved from any wrongdoing in this matter because equitable principles compel that result are unconvincing since he comes before the Hearing Committee with unclean hands. Respondent had adequate opportunity between December 15, 1976, and January 5, 1977, to formally protect his interests in this case. Even if he relied in good faith on the broken oral promises of City officials that the sale would not take place, he was not justified in stopping the sale through dishonest and deceiving actions.

The Hearing Committee does not perceive the issue in this case to be whether or not one filing a property claim on another's behalf under Pa. R.C.P. No. 3202 need have actual authority. We perceive the issue to be whether or not an attorney may assume the representation of an individual or corporation when he has not been consulted or retained by such individual or corporation.

DR 2-103, not here involved, states that

> "A lawyer shall not recommend employment as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer."

Thus, if a lawyer may not recommend employment under such circumstances, it is certainly misconduct on the lawyer's part to actually assume the representation of a non-lawyer who has not sought his advice.

The end in this case does not justify the means employed by Respondent. Contrary to Respondent's pro-

testations, the Hearing Committee fails to see how a sale of his desks, chairs, typewriters, file cabinet, and all property on his premises (P.E. 57), valued by him in behalf of his landlord at $500.00 (P.E. 55), would have put him out of business and subjected him to malpractice claims. His clients' files were not levied upon and there is no evidence in the record that anyone had any intention of removing them. The Respondent need only have replaced a few items of office furniture to have been back in business.

The demeanor of Respondent and the attorneys for the City of Pittsburgh while testifying, and the substance of their testimony, reveals clearly that their legal battles involving Respondent's resistance to paying certain City taxes developed into some personal animosities. The Hearing Committee perceives that some of the tactics and procedures utilized on both sides of this controversy were motivated by pride and a determination that opposing counsel not have a personal victory. Respondent's actions in filing Property Claims in behalf of his landlord falls into that category of motivation.

It is clear no attorney-client relationship ever existed. That being the case, the Hearing Committee concludes that Respondent has not violated DR-7-102 since an attorney-client relationship must exist before that disciplinary rule is violated.

CONCLUSIONS OF LAW

1. The Respondent is an attorney at law, duly admitted and licensed to practice law before the various Courts of the Commonwealth of Pennsylvania.

2. As an attorney at law duly admitted to practice law in the Commonwealth of Pennsylvania, Respondent is subject to the Code of Professional Responsibility of the American Bar Association as adopted by the Supreme Court of Pennsylvania on May 20, 1970.

3. As an attorney at law duly admitted to practice law in the Commonwealth of Pennsylvania, Respondent is subject to the exclusive disciplinary jurisdiction of the Supreme Court of Pennsylvania and the Disciplinary Board created by the Supreme Court of Pennsylvania.

4. Respondent received a due process hearing before a designated Hearing Committee of the Disciplinary Board of the Supreme Court of Pennsylvania.

5. The Disciplinary Board of the Supreme Court of Pennsylvania has the authority to discipline Respondent for violations of the aforesaid Code of Professional Responsibility.

6. Respondent has violated the following Disciplinary Rules: Charge 1—DR 7-101 (A) (2), DR 7-101 (A) (3), DR 9-102 (B) (3), DR 1-102 (A) (6), DR 9-102 (B) (4); Charge 2—DR 7-102 (A) (1), DR 1-102 (A) (5) (6), DR 7-106 (C) (7); Charge 4—DR 1-102 (A) (4) and (5).

7. Respondent did not violate the following Disciplinary Rules: Charge 3—DR 1-102 (A) (6), DR 7-102 (A) (1); Charge 4—DR 7-102 (A) (5).

RECOMMENDED DISPOSITION

The four charges against Respondent dealt with in these proceedings cover essentially three legal matters, small portions of the time and effort expended by a very busy trial lawyer over a period of six years, from 1971 to

1977. The conduct we have found to violate the Code of Professional Responsibility is clearly not of the most obvious and flagrant level, i.e., embezzlement. And yet, there is a thread running through Respondent's behavior as evidenced in this Record which is disconcerting . . . even alarming to this Hearing Committee.

It seems fair to state that Respondent is not a lawyer in the conventional mold. Practicing by himself out of a small office with minimum staff and facilities, he maintains a large and active practice. His unorthodox methods involve the filing of pleadings, motions, petitions, briefs and other tools of the profession in great profusion. His recital of authority is very extensive, if not always accurate and precise.

His energy and tactics in the representation of his clients, his frequent resort to personal law suits against others, and his liberal use of appeals have proved disconcerting and frustrating to many lawyers and judges. But it must be clear the disciplinary system is not a measure of last resort for lawyers and judges who cannot cope with an energetic and innovative practitioner. Only where a lawyer's behavior violates the Code and in so doing has inflicted harm on his client or has been abusive of the rights of other litigants, lawyers, judges, or the legal system, should the disciplinary system be resorted to. The great temptation to use the disciplinary system simply out of frustration must be avoided. Only conduct actually amounting to violations should ever merit discipline.

We therefore approached the disposition of these charges with a resolve on the one hand that the proceedings not become a weapon against Respondent by frustrated opponents, but instead, that it be exclusively a forum for

measurement of his conformity with the rules of conduct to which all lawyers are bound by law and rule. Having determined violations of the Code occurred, we must now address the level of disciplinary action.

A disciplinary hearing is held to determine the continued fitness of a lawyer to practice law. In Re: Alker, 157 A.2d 749 (1960). Its purpose is not alone, or even principally, to punish, but rather to insure the present and future protection of others who are entitled to protection. We have examined the totality of Respondent's conduct, as reflected by the evidence in the Record, since isolated instances of misconduct may not warrant severe disciplinary sanction. Office of Disciplinary Counsel vs. Campbell, 345 A.2d 616 (1975).

What is the apparent future risk if Respondent continues to practice law as in the past? Exploring the thought processes and legal philosophy of Respondent based on an eighteen hundred page Record offers much assistance in measuring his capacity for good . . . or mischief.

Respondent insisted on representing himself through a long and involved proceeding despite repeated reminding by the Committee that he was entitled to legal counsel. For various reasons (cost, time required to prepare counsel, etc.) he refused. It is doubtful that the basic fallacy of a lawyer representing himself will ever be more dramatically demonstrated than in this case. The technical difficulties in separating his questions, answers, objections, arguments, etc., were substantial. But the fundamental difficulty in applying objective appraisal to emotional issues simply proved too much for him.

Respondent's view of the proceedings is unorthodox. He insisted that Disciplinary Counsel had a duty to open

his files completely, to provide Respondent with evidence, witnesses and even copies of Respondent's own exhibits, and to investigate whether witnesses had told the truth. (TR 826, 937). Out of an abundance of caution, the Hearing Committee allowed Respondent considerable latitude, by giving access to Disciplinary Counsel's file, in presenting his case, in the questions allowed, in allowing him to call witnesses out of order, and in tolerating the mixture of argument and testimony with which the Record abounds. All of this contributed to a Record which was unnecessarily long and burdensome.

Respondent revealed many novel theories relating to the practice of law. Among these were his view that a clerk in a public office has a duty to erase and/or correct entries on public records, even judgments, on the assertion of error by an attorney (TR 928-9). This Committee is convinced this is not the law and indeed is an invitation to such mischief the integrity of the recording and filing systems might well be impaired.

Respondent theorized at one point the Rules of Civil Procedure were inapplicable because the right of waiver, reserved by the Court in Pa. R.C.P. 126, means that no Rule is enforceable until the Court decides not to utilize its right of waiver. (Respondent's Brief, Page 97). Such an interpretation is clearly erroneous, but is so unorthodox as to cause one to be legitimately concerned about the standards and practices of its proposer.

Respondent during one vigorous exchange on a ruling by the Committee expressed the view that, "when you are a lawyer, you are a warrior. You are engaged in war with the otherside." (TR 801). Unexpressed was the corollary that "all is fair in . . . and war." This view is certainly consistent with Respondent's undisciplined behavior revealed in this Record.

Respondent appeared as a supremely confident attorney who glories in his individuality. He views with indifference customary rules on keeping records. Indeed, his record-keeping of client payments is clearly inadequate. Yet he seems unaware, even unconcerned about this, even though this failing was at the heart of his trouble with the Kronzeks. In matters of practice, he seems unaware that while his unorthodox tactics may rarely equate themselves with brilliance, they will most often be merely bad, even dangerous practice, with his clients suffering the ultimate loss.

This Committee believes the above examples from its experience in this case warrant the judgment we have reached. Having carefully considered Respondent's conduct based on the believable testimony in this case, having carefully observed his conduct in the course of seven eventful days of hearings, and having read and thought through the revelations in his exhaustive brief, the Committee is brought to the inevitable conclusion that this defendant does not follow the law or respect it. He uses it, bends it, twists it and turns it to achieve his own chosen goals. There is danger to the private litigants, to officers of the Court, to the Court itself, indeed to the very system we describe as the Rule of Law in such disregard and disrespect.

What discipline can be exerted that others may not suffer the torment of the Kronzeks, the Grzelkas, yes and of the Harrises and Strassburgers? Can Respondent adjust his habits of practice to a more rational and acceptable pattern? Can he forego the use of legal process for purposes of harassment?

This Committee has balanced many factors. These are the first formal charges against him before the Disciplinary System. Moreover, as Disciplinary Counsel pointed out in his Brief, Charges 2 and 3 arise out of lawyer-disagreements dating back a number of years. And yet, Respondent has never made the Kronzeks, the private complainants, whole by paying them money clearly due them. And the simple truth is that Respondent has played fast and loose with the legal system, bending it to his own purpose. Respondent's attitude toward these proceedings and the legal system have been extremely negative. One does not cure an apparent contempt for the law by a sprinkling of professions of respect, as Respondent is so wont to do. Accordingly, this Committee recommends "Public Censure By The Supreme Court, With . . . Probation" (PRDE §85.8(3)) as the appropriate discipline to be meted out to Respondent. The Committee does not believe that any level of private censure will be sufficiently impressive to Respondent. But for reasons above noted, neither suspension nor disbarment at this point seems justified.

Our recommendation of probation reflects our confidence that a period of observation and orientation for Respondent will be necessary to assist him to making necessary adjustments in his mode of practice.

Respectfully submitted,
Hearing Committee 4.05
(s) Chester H. Byerly
Chester H. Byerly
(s) Herbert Margolis
Herbert Margolis
(s) Charles C. Keller
Charles C. Keller, Chairman

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

100 Pine Street
P.O. Box 806
Harrisburg, Pennsylvania 17108
(717) 232-7525

Office of the Secretary
Nan M. Cohen

Members of the Board
Alexander Unkovic,
Chairman
Charles V. Henry, III,
Vice-Chairman
Henry T. Reath
Dennis C. Harrington
John C. Anderson
Herbert J. Johnson, Jr.
Raymond Pearlstine
Pasco L. Schiavo
Frank J. McDonnell

October 11, 1978

Allen N. Brunwasser, Esq.
903 B Grant Building
Pittsburgh, PA 15219

RE: Office of Disciplinary Counsel
v. ALLEN N. BRUNWASSER
Nos. 43 DB 77 and 3 DB 78

Dear Mr. Brunwasser:

Please review the enclosed letter dated October 6, 1978 and advise me whether you have any objections to

Letter, Dated October 11, 1978

making available the material requested by Michael P. Malakoff, Esquire.

I note in the record of your case that you requested the hearings be made public, which request was granted by Hearing Committee 4.05, but found nothing to indicate you requesting that any further part of the proceeding, including the material requested by Mr. Malakoff, could be made public. Please advise.

Very truly yours,
(s) Nan M. Cohen
Nan M. Cohen
Secretary

NMC/emb
Enclosure
cc: Michael P. Malakoff, Esq.

Letter, Dated October 13, 1978

OCTOBER 13, 1978

Nan M. Cohen, Secretary
The Disciplinary Board of
the Supreme Court of Pennsylvania
100 Pine Street
P.O. Box 806
Harrisburg, PA 17108

Dear Mrs. Cohen:

I object to Michael Malakoff obtaining any information concerning my disciplinary problems.

He and I are adverse parties in a case in the United States District Court for the Western District of Pennsylvania in which matter his fee in a class action is being disputed.

I cannot understand what proper use could be made of the report and therefore out of an abundance of caution, I am requesting that it not be released.

In the event Mr. Malakoff desires to examine the report, I have no objection to him doing so in my office but I would resist permitting him to examine the file.

An additional thought might be that the District Court has intimated he may refer the problems which arose in the hearing to the Federal Board of Judges for consideration about a disciplinary case.

I would thus oppose Mr. Malakoff getting the benefit of my experience, work and thinking in the event he himself becomes a target of the Disciplinary Board in the future.

Letter, Dated October 13, 1978

Thus, please do not permit Mr. Malakoff to examine my file, please do not discuss anything with him, please do not allow him to examine the report or to examine any pleading or paper in the file.

Of course, this would include giving him a copy of everything.

Thanking you for your cooperation and your kind help in other matters involving my own case, I remain,

Respectfully yours,
ALLEN N. BRUNWASSER

ANB/dc

Letter, Dated October 17, 1978

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

100 Pine Street
P.O. Box 806
Harrisburg, Pennsylvania 17108
(717) 232-7525

Office of the Secretary
Nan M. Cohen

October 17, 1978

Michael P. Malakoff, Esquire
508 Law and Finance Building
Pittsburgh, PA 15219

RE: Allen N. Brunwasser, Esquire

Dear Mr. Malakoff:

This responds to your letter to me dated October 6, 1978.

Letter, Dated October 17, 1978

Rule 402 of the Pennsylvania Rules of Disciplinary Enforcement requires the confidentiality of all proceedings with certain exceptions, one of which is if the respondent/attorney requests that the matter be public. While Mr. Brunwasser has requested that the hearing on disciplinary charges brought against him be public, he, by letter dated October 13, 1978 in response to a query of mine, has advised that he objects to any further release of information concerning this matter. Consequently, I regret to advise that I do not have the authority to make available to you the copy of the hearing committee report or Mr. Brunwasser's motion which you requested.

Very truly yours,
(s) Nan M. Cohen
Nan M. Cohen
Secretary

NMC/emb
cc: Allen N. Brunwasser, Esquire

Order of Board

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

Nos. 43 DB 77; and 3 DB 78

Office of Disciplinary Counsel

Petitioner

v.

Allen N. Brunwasser

Respondent

(Allegheny County)

ORDER

AND NOW, this 9th day of December, 1978, the Recommendation of Hearing Committee 4.05 dated September 25, 1978, is rejected; and it is

ORDERED AND DECREED, that the said ALLEN N. BRUNWASSER of Allegheny County, be subjected to PRIVATE REPRIMAND by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204 (5) of the Pennsylvania Rules of Disciplinary Enforcement at the next session of this Board.

BY THE BOARD
(s) C. V. Henry, III
Vice-Chairman

True Copy From Record

Attest:

(s) Nan M. Cohen
Nan M. Cohen, Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania
(Seal)

---

§89.205. Informal admonition or private reprimand.

(a) *General rule.* Enforcement Rule [17-8(c)] 208(d)(2)(ii) provides that in the event that the Board determines that the proceeding should be concluded by informal admonition or private reprimand, it shall arrange to have the respondent-attorney appear in person before [it and] Chief Disciplinary Counsel for the purpose of receiving informal admonition or before the Board for the purpose of receiving private reprimand, in which case the Chairman shall deliver the private reprimand. In such event the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12 (Notice to Appear for Private Reprimand). The notice shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that wilful failure to appear before the Board or Chief Disciplinary Counsel for private reprimand or informal admonition shall be an independent ground for discipline and that the Board and (when administering informal admonitions) Disciplinary Counsel are "tribunals" within the meaning of the Disciplinary Rules (see, e.g. DR 7-106(C)).

(b) *Appearance.* An attorney who is given notice to appear for informal admonition or private reprimand shall appear in person at the time and place fixed in such notice, for the purpose of receiving such informal admonition or private reprimand. A permanent record shall be made of the fact of and basis for such [private reprimand] action as is taken. The fact of receipt of such admonition or reprimand shall not affect the good standing of the respondent-attorney as an attorney and shall be kept confidential, but shall be subject to limited availability under §93.102(b) of this Title (relating to exceptions.)

(c) *Failure to appear.* The neglect or refusal of the respondent-attorney to appear before Disciplinary Counsel for the purposes of informal admonition without good cause shall automatically convert the decision of the Board on informal admonition into one for private reprimand. The neglect or refusal of the respondent-attorney to appear before the Board for the purposes of private reprimand without good cause shall automatically convert the decision of the Board on private reprimand into a recommendation to the Supreme Court for [public] censure, and the Office of the Secretary shall notify the respondent-attorney, and the Office of Disciplinary Counsel accordingly.

Letter, Dated January 22, 1979

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

100 Pine Street
P.O. Box 806
Harrisburg, Pennsylvania 17108
(717) 232-7525

Office of the Secretary
Nan M. Cohen

Members of the Board
Alexander Unkovic,
Chairman
Charles V. Henry, III,
Vice-Chairman
Henry T. Reath
Dennis C. Harrington
John C. Anderson
Herbert J. Johnson, Jr.
Raymond Pearlstine
Pasco L. Schiavo
Frank J. McDonnell

January 22, 1979

Michael P. Malakoff, Esquire
508 Law & Finance Building
Pittsburgh, PA 15219

Dear Mr. Malakoff:

The Board considered your request for copies of the hearing committee report and the Disciplinary Board Opinion in the Allen N. Brunwasser proceeding, and granted your request.

Letter, Dated January 22, 1979

Accordingly, I am enclosing copies of the report and opinion being made available to you at a cost of 10¢ a page. A copy of the invoice for the material is also enclosed Please make the check payable to "The Disciplinary Board".

Very truly yours,
(s) Nan M. Cohen
Nan M. Cohen
Secretary

NMC/emb
Enclosures

Letter, Dated January 22, 1979

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA
DISTRICT IV OFFICE

3606 Mellon Bank Building
525 William Penn Place
Pittsburgh, Pennsylvania 15219
(412) 391-3922

Chief Disciplinary Counsel
Allen B. Zerfoss

DISTRICT IV

Assistant Disciplinary Counsel-in-Charge
Edward A. Burkardt
Ronald H. Pferdehirt
John E. Quinn
January 22, 1979

Michael P. Malakoff
908 Law & Finance Building
Pittsburgh, PA 15219

Dear Sir:

I have been informed by the Secretary of the Disciplinary Board that, pursuant to your prior request, on January 19, 1979, The Disciplinary Board determined that the Report of the Hearing Committee and of The Disciplinary Board in the actions against Allen N. Brunwasser at 43 DB 77 and 3 DB 78 may be treated as a public record. Accordingly, I am authorized to release copies of the same to you.

Because of the length of the documents, it has been necessary to make a charge of $.10 per page for the 65

Letter, Dated January 22, 1979

pages involved. Please forward your check, in the amount of $6.50, payable to "The Disciplinary Board", to the address shown above.

Sincerely,

(s) Edward A. Burkardt
Edward A. Burkardt
Assistant Disciplinary Counsel

EAB: rma
Enclosures

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

No. 43 DB 77; and 3 DB 78

Office of Disciplinary Counsel

Petitioner

v.

Allen N. Brunwasser

Respondent

ORDER SUR
MOTION TO DISMISS RECOMMENDATIONS OF DISCIPLINARY BOARD AND TO HOLD EVIDENTIARY HEARING AND FOR OTHER RELIEF

AND NOW, March 1, 1979, the Motion of respondent having been considered by the Disciplinary Board, and it appearing that the respondent waived the confidentiality of the proceedings by requesting "that the proceedings in these charges be open to the public and not secret" (see "Motion for Open Hearing" filed December 19, 1977), the respondent's Motion is denied.

The Disciplinary Board of the
Supreme Court of Pennsylvania

By: Charles V. Henry, III
Charles V. Henry, III
Vice-Chairman

Mr. Unkovic did not participate in these proceedings.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

No. 43 DB 77; and 3 DB 78

Office of Disciplinary Counsel

Petitioner

v.

Allen N. Brunwasser

Respondent

ORDER SUR
MOTION TO REMAND TO HEARING COMMITTEE FOR REOPENING OF RECORD WITHIN THE MEANING OF DISCIPLINARY BOARD RULE 89.251

AND NOW, March 1, 1979, the Motion of Respondent having been considered by the Disciplinary Board, and it appearing that the additional facts, if proven, would not alter the recommendations of this Board which were based upon the respondent-attorney's conduct and not the merits of his dispute with his clients, the respondent's Motion is denied.

The Disciplinary Board of the
Supreme Court of Pennsylvania

By: Charles V. Henry, III
Charles V. Henry, III
Vice-Chairman

Mr. Unkovic did not participate in these proceedings.

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

100 Pine Street
P.O. Box 806
Harrisburg, Pennsylvania 17108
(717) 232-7525

REQUEST FOR SUPREME COURT ACTION

Date March 14, 1979
Nos. 43 DB 77 and 3 DB 78

Office of Disciplinary Counsel

Petitioner

vs.

Allen N. Brunwasser

Respondent

Allegheny County

The Honorable Michael J. Eagen
Chief Justice
Supreme Court of Pennsylvania
464 City Hall
Philadelphia, Pa. 19107

Dear Chief Justice Eagen:

The respondent has notified the Board that he is unwilling to have the above captioned matter concluded by Private Reprimand.

Accordingly, and pursuant to Enforcement Rule 208 (d) (2) (iii) the undersigned submits herewith the findings and recommendations of The Disciplinary of the Supreme Court of Pennsylvania in the above proceeding dated January 9, 1979, together with the entire record.

(s) Charles V. Henry, III
Charles V. Henry, III
Vice-Chairman
The Disciplinary Board of the
Supreme Court of Pennsylvania

cc: Respondent—Allen N. Brunwasser, Esq.
Chief Disciplinary Counsel—Allen B. Zerfoss, Esq.
Assistant Disciplinary Counsel—Edward A. Burkardt, Esq.

Members of Hearing Committee 4.05
Charles C. Keller, Esq., Chairman
Chester H. Byerly, Esq.
Herbert Margolis, Esq.

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District

No. 224, Disciplinary Docket No. 1
(Admitted 4/6/50 at Pittsburgh)
(Board File Nos. 43 DB 77 and 3 DB 78

Office of Disciplinary Counsel

Petitioner

v.

Allen N. Brunwasser

Respondent

ORDER

AND NOW, this 26 day of April, 1979, it is hereby ORDERED that ALLEN N. BRUNWASSER, Esquire, be privately reprimanded by the Disciplinary Board of the Supreme Court of Pennsylvania, pursuant to Rule 204 of the Pennsylvania Rules of Disciplinary Enforcement.

BY THE COURT:
(s) M. J. Eagen
Chief Justice

True Copy From Record

Attest:
(s) Sally Mrvos
Sally Mrvos, Esq.
Prothonotary
(Seal)

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Sally Mrvos
Prothonotary
Catherine E. Lyden
Deputy Prothonotary

456 City Hall
Philadelphia, 19107
(215) 686-3581-84

May 14, 1979

Allen N. Brunwasser, Esq.
903 B Grant Bldg.
Pittsburgh, Pa. 15219

RE: Office of Disciplinary Counsel
v. Allen N. Brunwasser
No. 224, Disciplinary Docket No. 1
(Board File Nos. 43 DB 77 & 3 DB 78)

Dear Mr. Brunwasser:

The following order has been endorsed on the Motion for Oral Argument and Reargument, filed in the above matter:

"May 10, 1979.
DENIED.

BY THE COURT:
(s) Michael J. Eagen
Chief Justice"

Very Truly yours,
Sally Mrvos, Esq.
Prothonotary

By Catherine E. Lyden
Deputy Prothonotary

/diS
cc: Allen B. Zerfoss, Esq., Chief Disciplinary Counsel
Edward A. Burkardt, Asst. Discp. Counsel In-Charge, Pbg.
Mrs. Nan M. Cohen, Secretary of the Board
Supreme Court: Middle & Western Districts.
C.J.

DOCKET ENTRIES

Action No. 72-968
Civil Docket Continuation

Haas vs. Pgh Natl Bank et al

Date 1977	Proceedings	
	* * * * *	
July 15	Praecipe for appearance of Alexander, Unkovic as counsel for Mary Haas & John Mitchell as to matters arising from petition of plfs. & plf's. attorneys for attorneys' fees	204
	* * * * *	
July 19	Motion to foreclose any award of counsel fees filed by Allen N. Brunwasser, Esq.	215
	* * * * *	
August 19	Answer to motion to foreclose any award of counsel fees filed	217
	* * * * *	
Sept. 1	Motion to strike appearance of Meyer, Unkovic & Scott, Esqrs. and answer to motion to foreclose any award of counsel fees which answer was filed by said firm filed by Allen N. Brunwasser, Esq.	226
Sept. 6	Order ent that briefs be filed (Teitelbaum, J.) (re mot to strike appearance of Meyer, Unkovic & Scott et al filed by Atty Brunwasser)	227
	* * * * *	
Oct. 11	Letter from Atty Unkovic to the Court dated 10/7/77 filed (Teitelbaum, J)	230